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ABSTRACT

This document contains two congressional hearings on H.R. 4599, the Federal Pay Equity Act of 1984, and H.R. 5092, the Pay Equity Act of 1984. These bills would mandate the Office of Personnel Management to study wage discrepancies in the Federal classification structure and to devise a more equitable job evaluation program and would require periodic detailed reports of actions of various agencies to enforce Federal laws prohibiting wage discrimination. Testimony includes statements from Representatives in Congress, the Lieutenant Governor of California, and individuals representing the National Organization for Women; National Education Association; Service Employees International Union, AFL-CIO; National Pay Equity Committee; American Association of University Women; Office of Personnel Management; Communications Workers of America; American Federation of State, County, and Municipal Employees; Equal Employment Opportunity Commission; American Federation of Government Employees, AFL-CIO; American Postal Workers Union, AFL-CIO; American Nurses' Association; Federally Employed Women, Inc.; 9 to 5 National Association of Working Women; National Federation of Federal Employees; National Association of Government Employees; American Society for Personnel Management; AFL-CIO; Program of Policy Research on Women and Families; International Ladies' Garment Workers' Union; American Library Association; Association of Flight Attendants; and Special Libraries Association. (YLB)

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FEDERAL PAY EQUITY ACT OF 1984

PART 1

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
COMPENSATION AND EMPLOYEE BENEFITS

OF THE

COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 4599

A BILL TO PROMOTE PAY EQUITY AND ELIMINATE CERTAIN WAGE-SETTING PRACTICES WITHIN THE FEDERAL CIVIL SERVICE SYSTEM WHICH DISCRIMINATE ON THE BASIS OF SEX, RACE, OR ETHNICITY AND RESULT IN DISCRIMINATORY WAGE DIFFERENTIALS

H.R. 5092

A BILL TO REQUIRE PERIODIC, DETAILED REPORTS TO THE PRESIDENT AND THE CONGRESS BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE SECRETARY OF LABOR, AND THE ATTORNEY GENERAL DESCRIBING ACTIONS TAKEN TO ENFORCE FEDERAL LAWS PROHIBITING DISCRIMINATION IN COMPENSATION ON THE BASIS OF SEX, RACE, RELIGION, COLOR, OR NATIONAL ORIGIN AND TO REAFFIRM THE PROVISIONS IN FEDERAL LAW WHICH DECLARE THAT EQUAL PAY SHOULD BE PROVIDED FOR WORK OF EQUAL VALUE

APRIL 3 AND 4, 1984

Serial No. 98-29

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FEDERAL PAY EQUITY ACT OF 1984

TUESDAY, APRIL 3, 1984

House of Representatives,
Committee on Post Office and Civil Service,
Subcommittee on Compensation and Employee Benefits,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:10 a.m., in room 2172, Rayburn House Office Building, Hon. Mary Rose Oakar presiding.

Ms. Oakar. The Subcommittee on Compensation and Employee Benefits will come to order.

Today the subcommittee will begin a series of hearings on H.R. 4599, the Federal Pay Equity Act of 1984, and H.R. 5092, the Pay Equity Act of 1984; 2 days of hearings will be held in Washington, D.C. I will complete the series in field hearings throughout the country during the summer. I am pleased to have so many fine witnesses appearing today, and we are very anxious for their testimony.

In the fall of 1982, I was fortunate enough to chair, along with Congresswomen Pat Schroeder and Geraldine Ferraro, the first congressional hearings on pay equity. During these hearings, we confirmed that sex-based wage discrimination is pervasive in the private and public sectors.

Witnesses at the hearings urged that in order to eliminate these discriminatory practices, the Federal Government needs to be aggressive in enforcing the current laws. We were in fact promised increased enforcement efforts by administration officials.

Unfortunately, since that time, it appears that the administration has failed to keep faith with the working women of this country. While vigorous litigation and bargaining efforts are being pursued by several major unions, and State and local governments continue to examine their pay structures for discrimination against women, the Federal Government is now doing nothing.

In fact, the administration may move from benign neglect to active opposition within the weeks ahead by formally casting its lot in Federal court with vocal opponents to pay equity.

The Equal Pay Act of 1963 prohibits an employer from paying a woman less than a man if they are performing the same job which requires equal skill, effort, and responsibility. Similarly, the Civil Rights Act of 1964, title VII, prohibits employers from paying women lower wages even when job content differs.

Even though these laws are 20 years old, women still average 40 percent less in earnings than men. In 1939, women earned 63.06

cents for every dollar earned by men. In 1950, this dropped to 62 cents, and has remained at that level ever since.

In a very real sense, women are going backward despite the commitment of our Nation to eliminate discrimination in all facets of life. For women it is a catch-22 situation. Low wages as workers translates into even lower social security and pension benefits in their retirement years.

Is it any wonder that the poorest person in our country is a woman over 65?

Two decades after the Equal Pay Act and Civil Rights Act, the wage differential has remained virtually unchanged despite the fact that nearly half of all bachelors and masters degrees are now earned by women. Both black and white women who are college graduates have lower mean earnings than white men with eighth grade educations.

It is still true that the more an occupation is dominated by women, the less it pays. The average annual salary for a secretary is nearly $4,000 a year less than a truckdriver. Private household workers, 95 percent of whom are women, earn less than half of what is paid a janitor.

And most child-care workers are paid less than dog-pound attendants. Our pets seem to be more important than our children. What a sad commentary for the future of this country.

Not only are women clustered in low-paying occupations, but according to a report of the National Academy of Science, they are more likely than men to be employed in low-paying firms. This clustering is also true of our Federal Government.

In addition, 90 percent of all single parents are women, 35 percent of whom fall below the poverty line. Fifty-three percent of all women now work, an increase of 30 percent since 1950. Furthermore, women who maintain families average $10,000 a year while two-earner couples earn approximately $28,000.

Why does the wage gap persist between men and women? Is it simply that women's work is valued less than men's? Is the law inadequate in protecting women workers? Or is the issue of pay discrimination misunderstood?

Part of the reason that sex-based wage discrimination exists despite current law is that women remain in traditionally female-dominated occupations; 81 percent of clerical workers, 96 percent of nurses, and 82 percent of elementary schoolteachers are women.

In my opinion, teachers, nurses, and clerical workers are paid less by virtue of their gender and their roles in society, and not because their occupations are of less value to this Nation.

Some would argue that by opening career opportunities for women in traditionally male-dominant jobs, wage discrimination will eventually disappear. But the jobs that women perform are essential to our society. We, our children, our senior citizens, all Americans need quality health care. The future of our country is dependent on our educational system.

Rather than simply declaring victory when women attorneys are equal in number to men, we need to reexamine women's work and establish the true value of these occupations. We need to attack sex-based wage discrimination with the same spirit and courage as the freedom riders of a generation ago.

Union activity through collective bargaining and litigation has proved effective in eliminating pay inequity. But this is a costly process, and not available to every woman who works. State and local governments are also beginning to look at their own pay structures to determine whether sex-based wage discrimination exists. We can all applaud and find encouragement in the recent court decision in the State of Washington.

Corporations are also starting to voluntarily examine their pay practices. Only the Federal Government is standing mute, while Minnesota, Connecticut, and some cities in California are taking affirmative action to eliminate wage discrimination in various occupations. This administration seems to be devoting its energy to defining terms, not to enforcing the present laws.

Members of Congress on both sides of the aisle have introduced legislation in reaction to the Federal Government's lack of commitment, if not outright opposition to pay equity. I am a firm believer that the laws which are in place provide adequate protection to employees. The legislation that I have introduced illustrates that belief.

The administration should be an advocate for pay equity, but it is just the opposite. Instead of enforcing the law, it is thwarting the law. My legislation would require the administration to fulfill its enforcement duties, and to be an advocate for pay equity.

One bill, H.R. 4599, mandates the Office of Personnel Management to study and identify the wage discrepancies in the Federal classification structure, and to devise a more equitable job-evaluation program. If successful, the Federal structure should provide a working example to the private sector and the States.

My second bill would require periodic detailed reports to the President and Congress by the Equal Employment Opportunity Commission, the Attorney General, and the Department of Labor describing the actions taken by these agencies to enforce Federal laws prohibiting wage discrimination.

It is no secret that the EEOC's activity, if I can even use the term, leaves much to be desired. It seems that the only real activity at this agency is tracking its growing inventory of unprocessed sex-based wage discrimination charges in cases.

It is my hope that this will soon change, and that the legislation that I am sponsoring along with many cosponsors will prompt the Federal Government to take a hard, serious look at pay equity, and that this administration will finally begin to fulfill its statutory responsibilities.

I want to make clear for the record that we did invite the President, the officials from the Department of Justice, the Labor Department to participate in these hearings. Unfortunately, they respectfully declined, and I am sorry to say that they are not going to be here.

However, at tomorrow's hearings, we will have Clarence Thomas, who is Chairman of the EEOC, and other very fine organizations. Phyllis Schlafly will be testifiying tomorrow along with some others that the minority has suggested that we invite.

We are very happy to have this hearing. We are grateful that the witnesses in today's hearing are appearing. And now I would like to ask my colleagues if they would have a statement.

Mr. Bosco.

Mr. Bosco. Thank you, Madam Chair. And in deference to the people who are waiting to testify, I will offer my testimony later. I do, however, want to thank you for bringing this matter into focus for our committee. It is very characteristic of you to be concerned for working people, both men and women. And I am looking forward to this 2-day hearing, so that we can finally begin to resolve these problems. Thank you.

Ms. Oakar. Thank you very much.

Mr. Leland.

Mr. Leland. Thank you, Madam Chairperson. I would like to take this opportunity to thank you for holding these hearings on the critical issue of pay equity for women. I am here to reaffirm my longstanding belief in equality for women, and to give support to the idea of equal pay for equal work regardless of sex.

It is sad and somewhat discouraging that 20 years after the Civil Rights Act, which mandated equality for all Americans regardless of race or sex, that we are still concerned with economic racism and bigotry that keep women and minorities at the bottom of the socioeconomic ladder.

I am encouraged this morning, however, by the long list of distinguished witnesses here to highlight the need to strengthen existing legislation and policy that is supposed to insure equal pay for equal work. It is my hope that this support from our colleagues and others will lead to eventual passage of the pay equity measures that you have introduced. I thank you.

Ms. Oakar. Thank you very much.

Mr. McCloskey.

Mr. McCloskey. Madam Chair, I would just like to thank you for your distinguished leadership in this area. I am really looking forward to these 2 days of hearings, and particularly hearing from our distinguished testaments today. So thank you so much.

Ms. Oakar. Thank you. We are happy to have Mr. Dymally who is not a member of the committee, but certainly a champion in this area. We are grateful to the Foreign Relations Committee for allowing us to use their room, and you are a distinguished member of that committee.

Mr. Dymally, we are glad to have you here.

Mr. Dymally. Thank you.

Ms. Oakar. Would you like to say a few words?

Mr. Dymally. I simply want to identify myself with the remarks of my colleagues.

Ms. Oakar. Thank you very much.

[The Chair has statements from the following Members which will be placed in the record at this point: Mr. Evans, Mr. Dannemeyer, Ms. Ferraro, Mr. Fish, and Mr. Frank.]

STATEMENT OF HON. LANE EVANS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Madam Chair, over the past two decades women have been entering the labor force in unprecedented numbers. They have achieved the same educational level as their male counterparts, and have been recognized as part of our country's pool of full-time career workers. Yet their wages do not reflect these tremendous gains. For every dollar earned by a man, a woman earns less than 60 cents—a figure that has remained virtually unchanged throughout this surge in growth of the female labor force.

During the '60s and '70s, legislation was passed and court cases fought over the equal pay for equal work and equal employment opportunity issues. It was assumed that these measures would be the mortar which could eventually fill in the wage gap. This has not been the case, and the raised consciousness of workers coupled with this hard reality have provided the catalyst for the movement towards a comparable worth theory.

The concept that jobs dominated by women may be valued less not because of skills required or job content but because they are "women's jobs" has caused policies instituted to eliminate sex discrimination to undergo serious attack and reassessment by supporters and opponents alike. Supporters argue that the equal pay for equal work standard has not been applied where job segregation exists because the Equal Pay Act applies only to those jobs in which both women and men are employed. Therefore, women in sex-segregated jobs rarely obtain relief under the Equal Pay Act.

It is time to find a way around the barrier to the achievement of true pay equity for women that is presented by a segregated job market. H.R. 4599, the Federal Employee Pay Equity Act, a bill which mandates more equitable wage determinations for Federal employees, would affect the nearly 11,000 Federal employees in the 17th Congressional District of Illinois. H.R. 5092, the Pay Equity Act of 1984, would require periodic, detailed reports to the President and Congress by the EEOC, the Department of Labor, the Department of Justice and the Office of Personnel Management describing the actions taken to enforce Federal laws prohibiting pay discrimination on the basis of sex, race, religion or national origin.

Madam Chair, the comparable worth principle goes considerably further than our current laws prohibiting wage discrimination, which have been ineffective in reducing the overall disparity between the earned incomes of men and women. I strongly support these measures as vital to the realization of the goal of true equality for the women and men of this great country.

STATEMENT OF HON. WILLIAM E. DANNEMEYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you, Madam Chair. I welcome our witnesses and observers to these two days of hearings on HR 4599 and HR 5902, bills which would require various federal agencies to determine the level of pay discrimination against women in the private and public workplace under the theory of comparable worth.

Jane Bryant Quinn of Newsweek said comparable worth is "going to be the money issue of the 1980s, its economic impact exceeding that of the labor-union movement of the 1930s" (Newsweek, January 16, 1984, p. 66).

We hear that women are paid 62% of what men are paid and that this proves discrimination. We hear about the "feminization of poverty." The Chair says that 2 of 3 women in our nation are poor. We hear that the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 have failed to narrow the wage gap between men and women and that we need new laws to combat sex discrimination. Why are women moving so rapidly into the workforce if their relative wage disadvantage has not declined? All of the above is very depressing news for women. The problem is that we don't challenge some of the numbers and that we don't read beyond the headlines.

Let me be clear. There is discrimination against women. There is stupid, illegal treatment of female applicants and employees. But statistics do not speak for themselves. Let us not be run over by numbers that are not accurate or that are misleading. We are not looking for mathematical precision. But we are looking for thoroughly honest calculations. Numbers by themselves should be not used to explain or to excuse sex discrimination.

First, the 62 percent. The figure is actually 69 percent according to June O'Neill of the Urban Institute. So we have a wage gap of 31 percent. Why? Is the whole thing due to discrimination? That is what both of Miss Oakar's bill say. Even the much quoted Census study, "American Women: Three Decades of Change" hedges by pointing to possible variables other than discrimination.

When you see these numbers thrown around, we have to ask: how much of the gap is due to choice or to discrimination. How much of the gap is due to differences in work experience, tenure on current job, training, unionization, quality of schooling, productivity? And how much is due to conditions of supply and demand? Small surveys try to control for the variables and to isolated discrimination. The Census Bureau does not have a definitive study. According to June O'Neill, after controlling for differences in lifetime labor market experience, there remains an unexplained gap of 10% to 25%. Some studies have explained that gap as differences in incentives. The best we can conclude at this time is that the residual wage gap is a measure of our ignorance, rather than a measure of blatant discrimination. These hearings should help to close that ignorance gap.

Are women getting poorer as well as underpaid? The fact is that women somewhat increased as a percentage of poor adults over time, but a declining percentage of all women were poor. But 2 of 3 women are not poor, as the Chair has alleged. The poverty rate for women in 1982 was 16.5% compared to that for men which was 13.4%. In 1959, the poverty rate for adult women was 23.5% and for men 16.4%. The widely quoted Census table is seriously misleading because it measures the number of poor people in female-headed households, not the number of poor women.

June O'Neill has stated that the poverty faced by female-headed families "does not seem to be the result of a failure in the labor market. It more likely reflects complex social problems related to the dissolution of marriage, . . . forgoing the development of job skills . . . problems related to childbearing by women who are themselves children. . . ." Dr. O'Neill suggests that we address teenage child bearing and needed changes in absent father support.

If the numbers are not certain, the theory of comparable worth is even less certain. For in comparable worth we compare not just male teachers with female teachers but male truck drivers with female secretaries on the basis of a supposed "objective" evaluation. The idea is that someone can compare dissimilar jobs by reducing each job to points awareded for job skills, education, responsibility, and work environment. The problem is who is that "someone" going to be?

Both of Miss Oakar's bill would have various federal agencies sent out on search and destroy missions using the weapon of comparable worth. Unfortunately, it is the least skilled among women and our economic system that would get shot. Can you imagine Congress trying to determine the comparable worth of wages? Can you imagine an agency trying to do it? Congress cannot even determine its own wages properly! Should Clara Peller get $500,000 a year for asking, "Where's the beef?" I think she worth every cent. However, Wendy's competition might think otherwise. But that's the kind of case we would get involved in under this bill. I am not the only one with this concern. A black columnist for the Washington Post, William Raspberry, says the comparable worth notion "seems to introduce more problems than it solves." (column enclosed)

Comparable worth is a theory that would replace the marketplace and collective bargaining. It would hurt the least skilled women by driving their jobs overseas. Finally, it is not a women's issue. It is as repulsive as the claim that women should stay in the home. It says women should stay where they are in their jobs, because comparable worth will raise your wages without productivity, without merit, without the inconvenience of supply and demand. The concept is an affront to women's intelligence and capabilities.

So to the public and the media I would urge you to look closely at the numbers, to be unafraid to question the theory of comparable worth. Comparable worth is posed as an us against them theory. Either you're for women or you're against women. Well, that ain't the case. What we're against is discrimination and so-called remedies that are discriminatory.

To the private sector, I would say, look out. If we have more cases like the Willmar 8 or other cases of blatant and illegal harassment then we're just inviting things like comparable worth. As Jane Bryant Quinn put it, "unless employers start treating (pay equity) seriously, they're going to get a federal judge as vice president of personnel."

Again, Madam Chair, thank you for holding these hearings.

[The articles referred to follow:]

Comparable Pay for Women

JANE BRYANT QUINN

I have misgivings over a line now being pursued in court to raise the pay of millions of working women—using a concept known as "comparable worth." It's going to become *the* money issue of the 1980s, its economic impact exceeding that of the labor-union movement of the 1930s.

For the past 20 years, it has been illegal to pay women less than men for doing substantially the same job. But it has *not* been considered illegal to establish lower pay scales for female-dominated occupations, like librarian, secretary and nurse. In Washington, state-employed warehouse workers (male) start out with $472 a month more than clerk-typists (female). In Wisconsin, state-employed bakers (male) earn $150 a month more than cooks (female). In Philadelphia, 24 percent of city-employed women fall into the four lowest pay grades, but only 3 percent of the men.

Discrimination: Lower female pay is partly related to the way many women work. They may quit their jobs for a while to raise children or decline a higher job because of the pressure of home responsibilities. But after all the corrections have been made for differences in tenure and training between working men and women, it still turns out that women, on average, are paid less. That difference is the hard nut of discrimination.

Enter the doctrine of comparable worth. An evolving legal theory says that Title VII of the Civil Rights Act goes beyond equal pay for equal work: it also requires equal pay for jobs that, although different from those held by men, call for a comparable amount of knowledge, skill, effort and responsibility. Most courts have rejected that theory. But in 1981 the U.S. Supreme Court seemed to open the door a crack, and last December federal Judge Jack E. Tanner drove a decision through it.

He ordered the State of Washington to redress a discrepancy that its own studies found: female employees were earning an average of 70 percent less than men doing comparable work. According to a point system for evaluating jobs, certain clerk-typists in Washington should be the equal of warehouse workers, and practical nurses the equal of offset-press operators. Judge Tanner held it no excuse that some nurses in Washington can be hired in the open market for less than pressmen, gardeners and drivers or that the state has budget problems. The time to remedy pay discrimination, he said, is "right now." He appointed a "master" to determine new pay scales for an estimated 15,000 underpaid "women's" jobs (20 percent of them actually held by men). The state, which will appeal the decision, says that it would cost around $770 million in back pay and fringe benefits and add $130 million a year to the payroll. If Tanner is upheld, most other public and private employers could face similar costs.

While approving the end, I doubt the means. The Tanner approach assumes that personnel studies can satisfactorily compare different kinds of jobs. But what happens when the studies disagree, as they inevitably will? What if nurses decide that their job has not been given sufficient "worth"? If a shortage of gardeners drives up their pay, how much more will comparable workers have to earn to avoid the appearance of discrimination? What about male-dominated jobs that the studies say are also underpaid? There aren't enough courts to handle such endless battles over relative pay.

Other Options: If not by law, how else can underpaid women win a decent wage? One way is to quit practical nursing and learn to operate an offset press. Another way is to organize. Nurses in Denver lost their comparable-worth case in court but won higher pay by going out on strike. The International Union of Electrical Workers has been winning feminist bonuses for some of its women. The American Federation of State, County and Municipal Employees, which brought the successful Washington lawsuit, has won pay-equity adjustments through strikes and negotiations in Hennepin County, Minn., and San Jose, Calif., Spokane, Wash., and Los Angeles, among other cities.

Many women are wary of unions and with reason; most unions never did much for them. But the same techniques that worked for male blue-collar workers will work again. And case-by-case bargaining has the social advantage of taking each employer's financial situation into consideration, which no labor negotiation can ignore today. But one way or another, pay equity is on its way. Unless employers start treating it seriously, they're going to get a federal judge as vice president of personnel.

William Raspberry

[WASHINGTON POST,
3-26-84]

Who Decides 'Equal Worth'?

I'm not one to scream too quickly about getting the government off our backs. Government interference in private enterprise has accomplished some things worth accomplishing: ending slavery, outlawing racial and sexual discrimination, truth-in-packaging legislation, protection of the environment, just to name a few.

So it isn't a reflexive resistance to government interference that gives me problems with the radical new concept of equal pay for work of comparable value. My doubts have to do with whether, once your get past the first blush of the thing, the concept makes sense: whether it's reasonable to suppose that someone can rank jobs according to their intrinsic worth and have the government enforce that ranking by legislating the appropriate pay scales.

Paying people equally for performing the same work makes obvious sense, although we haven't always done it. For much of our history, women were paid less than men for the same jobs. I remember the rejoicing in my own boyhood home when my school-teacher mother got a hefty raise as a result of a new Mississippi law mandating equalization of pay for black and white teachers.

It also makes sense to remove, through government fiat if necessary, the barriers that keep people out of certain fields of employment because of such irrelevant factors as race and sex.

In both these cases, the unfairness is plain, and the remedy obvious. The unfairness is almost as clear—though the solution clearly isn't—with regard to another problem: the fact that some jobs pay less because their practitioners are women rather than men. Are teachers and nurses paid less than painters and tree-trimmers because their work is less valuable, or requires less training, or only because teachers and nurses are far more likely to be women? To ask the question is to answer it.

Still, I'm not convinced of the workability of the approach taken by Washington state—ranking jobs on a point system and setting equal pay scales for vastly different jobs that rate the same number of points: clerk typists and warehouse workers, for example.

To get personal about it, I will concede that the society could better survive the absence of newspaper columnists than the absence of garbage collectors. Does it follow that newspaper columnists, whose work is not only less vital but also far more pleasant and psychically rewarding, should be paid less than trash men, whose work is hard, boring, unpleasant and indisputably necessary? Or that columnists should be paid as much as TV news anchors, whose work is more directly comparable?

Nor is it particularly helpful to argue that more academic preparation is required for journalists than for sanitation workers. Teachers have to go to school for at least as long as professional athletes. But it doesn't necessarily follow that a physical education teacher should be paid as much as his former classmate who now plays for the Boston Celtics.

Even with adjustments for skills and physical risk as well as education and public need, the comparable-value idea isn't persuasive. Joe Theismann's work requires that he possess physical strength and stamina, intelligence and leadership ability. But does it really strike anyone as actionably unfair that Theismann is paid more, and for a far shorter work year, than the honcho of the local rescue unit, who must have comparable skills and whose work also involves saving lives?

I have no argument with the notion that the government should help break down the barriers that keep women in the lower-paid employment ghettos, or that the government has a role in seeing to it that they are fairly paid once they're out.

But the equal-pay-for-work-of-comparable-value notion seems to me to introduce more problems than it solves. And who, by the way, will decide the value of the people whose job it would be to assign value?

STATEMENT OF REPRESENTATIVE GERALDINE FERRARO

Madam Chair, I am delighted to offer this testimony in support of H.R. 5092, the Pay Equity Act of 1984 and H.R. 4599, the Federal Employees' Pay Equity Act of 1984.

The issue of pay equity holds great promise and challenge for the working women of our country. It promises women fair and decent wages based not on their sex but on the value of their work. But the challenge of pay equity is that it is a slow and expensive process to remedy. And the very agency charged with securing equality in employment for women and minorities—the Equal Employment Opportunity Commission—has turned a deaf ear to women's appeals for pay equity.

I commend you, Madam Chair, for taking a leadership role on this issue of great importance to women, and for turning this committee's attention to the failure of this Administration to seek and enforce remedies to this most pervasive form of employment discrimination against women.

It has been almost two years since you and I, along with Congresswoman Pat Schroeder co-chaired hearings on pay equity. During the course of those hearings we learned of the persistance of the "wage gap"—women's earnings hovering at just 60 percent of men's—despite decades of social, legislative and demographic change. We were told repeatedly of the two widespread, yet often subtle, forms of employment bias at work to depress women's wages: occupational segregation and sex-based wage discrimination.

We also heard countless hours of expert testimony and personal stories that, despite the phenomenal increase in women's labor force participation, women and children are the fastest growing segment of our nation's poverty population. The reason appears to be that most women's wages are barely above the poverty level. It is estimated that if women were paid the wages that similarly qualified men earn, we would cut in half the number of families in poverty. Clearly, the issue of pay equity for women must receive our highest priority if we are determined to reverse this trend.

Since 1960, the number of women in the labor force has more than doubled, with the labor force participation rate for women now at 53 percent. Women comprise 43 percent of the total labor force. With recent figures showing that 62 percent of married couples are dual-earner families, and 16 percent of all families are maintained by women, it is becoming increasingly clear that women are bearing a major responsibility for the economic support of their families. Yet, whether they are the sole support of themselves and their children or are contributing a portion of the family income, most women do not earn a living wage. In 1982, the majority of women working outside the home—60 percent—earned less than $10,000 a year.

A lifetime of low wages has implications for nearly every other issue relating to women's economic well-being. Pensions, Social Security and disability insurance are all directly tied to a person's income. The equity caused by the wage gap during a woman's working years simply is translated into economic insecurity in her retirement years.

What is this Administration doing to address this basic issue of economic equity for American working women? The last time we heard from them, when Clarence Thomas, Chair of the EEOC testified at our 1982 hearings, quite a contradictory impression was presented of the Administration's position on pay equity. On the one hand, Chairman Thomas stated that pay equity was a top priority of the Equal Employment Opportunity Commission. On the other hand, he suggested that one of EEOC's problems with pay equity cases is that they involve widespread, systemic practices of wage discrimination, properly dealt with in large, class-action suits. Mr. Thomas indicated that class-action cases are very expensive to process and would probably strain the resources of this Commission. Besides, this Administration's feelings toward class-action suits are well known.

Mr. Thomas is correct in recognizing that pay inequity is not an isolated incident but is the result of a pattern of job segregation and wage discrimination based on sex. The financial resources of individual women have long been strained by this pervasive inequality and it is inappropriate to suggest that these women use their limited resources to bring actions—one-by-one—against their employers. The EEOC's reluctance to utilize the most effective vehicle for adjudicating complaints of wage discrimination demonstrates their lack of commitment to achieving pay equity for women.

In 1981, the Supreme Court decision in *Gunther* v. *County of Washington*, opened the door to Title VII claims of sex based wage discrimination even when the jobs are not substantially equal. However, in the two-and-a-half years since *Gunther* was handed down, the EEOC has not filed a single pay equity case involving jobs which are not the same. In fact, there are currently over 250 pay equity cases pending before the Equal Employment Opportunity Commission. Who knows how many other women with wage discrimination complaints are out there, who have not brought their charges to the EEOC because they know it is a hopeless cause.

What has happened to the pay equity cases before the EEOC? In the words of one EEOC Commissioner, they have been "warehoused," intentionally set aside, probably put in a pile somewhere in a dusty filing cabinet. He said they are in this holding pattern while the Commissioners develop the EEOC's policy on pay equity.

Something is clearly wrong here. It is now April 1984, over two years since the *Gunther* decision and a year-and-a-half since Chairman Thomas testified that pay equity was a top priority. Why then, after all this time, is the excuse being offered that no pay equity policy has been formulated?

The fact is that the EEOC already has a policy to guide its investigation and litigation of pay equity cases. In 1981, when the Commission was still controlled by Carter appointees, temporary guidelines were issued to direct the investigation of sex-based wage discrimination cases. The current Commission, now with a majority appointed by President Reagan, has neglected to make these guidelines permanent, but has extended them every 90 days.

What has happened is that the regional offices continue to investigate claims of wage discrimination, but when they send their findings to Washington, they just sit. They sit because the current Commission is unwilling to grapple with the issue of pay equity and other equality issues which are of fundamental importance to the working women of America.

Fortunately, this lack of leadership, or even support, on the part of the EEOC has not stopped the pay equity movement from going forward. Thanks to the commitment of individual women and supportive unions, major strides have been made in remedying wage discrimination through negotiation, collective bargaining, litigation and job evaluation studies.

Just a few months ago, women workers in Washington State won a landmark pay equity decision brought by their union, AFSCME. Their employer—the State of Washington—was found to be in violation of Title VII due to its pervasive and intentional practice of segregating its workforce and supressing the wages of women workers. This case was won with no help from the EEOC although AFSCME had filed a formal complaint against the State of Washington with the EEOC. Fed up with EEOC's failure to act on the complaint, AFSCME went ahead and filed a suit on its own in Federal District Court. Now, the administration is expressing opposition to the court's decision and is threatening to intervene on behalf of the State in its appeal, just as it intervened on behalf of Grove City College in an attempt to weaken the law providing equal educational opportunity for women.

This administration says it does not believe in the Equal Rights Amendment because it prefers to remedy sex discrimination through legislatative and administrative actions. We are still waiting for a sign from the administration that it cares about the women of America. The inaction of the EEOC on behalf of pay equity clearly shows this administration's lack of commitment to improving the status of women in the economy and in the workforce.

I think it is unfortunate that we in Congress must continually act to protect the hard-fought gains women have made from the Reagan Administration's attempts to reverse those gains. However, if the Administration is unwilling to accept its statutory requirement to enforce our nation's civil rights laws, then we have no choice but to prod them further. Your two bills, Madam Chair, provide the necessary impetus to get the ball rolling on federal enforcement of pay equity for women workers in both the public and private sectors.

PREPARED STATEMENT OF HON. HAMILTON FISH, JR.

Madam Chair, I would like to express my appreciation to you and to the other Committee members for holding hearings on two bills of vital importance in eliminating sex-based wage discrimination. Discrimination in compensation is clearly illegal. These bills are important because they would facilitate oversight of existing law.

On September 16, 1983, AFSCME won a landmark pay equity lawsuit against the state of Washington. Discrimination by the state of Washington was found to be "pervasive, intentional and in violation of the law".

The effect of this decision has been far-reaching. The concept of pay equity is no longer an untried legal opinion. It has become a new, effective way of beginning to address the disparate nature of different pay scales between women and men. Pay

Equity has become the tool by which the wage gap between men and women can be narrowed, and hopefully one day closed. Today, there are over 47 million women in the labor force. Even with equal pay and anti-discrimination statutes on the books, women continue to earn less, approximately sixty cents on the dollar, than men do for performing both the same and comparable-valued work.

One of the prime causes of the wage gap is the segregation of women in a narrow range of low-paying jobs. The United States Labor Department statistics show that 52% of all working women hold jobs in two of the twelve major occupational categories: clerical and service jobs. Of 427 job categories within these twelve major groups, half of the working women in this country fall into only 20 occupations.

The National Academy of Sciences in a 1981 study determined that "the more an occupation is dominated by women, the less it pays". While this in itself is not a cause and effect relationship, the report went on to say that "only a small part of the earnings differences between men and women can be accounted for by differences in education, labor force experience, labor force commitment, or other human capital factors believed to contribute to productivity differences among women".

Women have been and continue to be discriminated against in compensation based on their sex. Title VII of the Civil Rights Act, as well as Executive Order 11246, expressly prohibit an employer from discriminating in compensation. The Supreme Court has found (in the Gunther decision) that this sex-based wage discrimination is illegal even if the jobs being compared are entirely different. What is needed now is enforcement of the law, and mechanisms for implementation of enforcement.

H.R. 4599, the Federal Employee Pay Equity Act of 1984, is one such mechanism. It mandates the Director of OPM to identify and eliminate discriminatory wage-setting practices. It sets up guidelines for OPM to follow in implementing this legislation. Many states have taken the initiative and have developed their own plans for remedying this discrimination. Minnesota is a case in point. Certainly the federal government should do no less than take the lead and come into compliance with the law.

In conjunction with this, H.R. 5092, the Pay Equity Act of 1984, would require periodic detailed reports to the President and Congress by the EEOC, the Department of Labor, the Department of Justice and OPM describing the actions taken to enforce these federal anti-discrimination laws.

In the area of civil rights, we must be continually vigilant. Although we can say that we have made great strides in the last twenty years, there have been many areas in which we have been remiss. Obviously it is not enough just to pass legislation, and assume that our intent is clear. There should be no question of the gravity of our omissions. We must be vigilant to see that these laws are implemented and enforced. This is not only a question of justice, it is a question of economic survival for women in our work force, and the families they support.

PREPARED STATEMENT OF HON. BARNEY FRANK

Madam Chair, thank you for inviting me to testify at these hearings. I commend you for your longstanding commitment to pay equity and for your efforts now and in the past to bring this issue to the forefront in Congress.

Last month, the Subcommittee on Manpower and Housing which I chair, held oversight hearings on the EEOC's enforcement of sex-bases wage discrimination laws. As you yourself testified, Madam Chair, it has been nearly three years since the Supreme Court allowed charges of wage discrimination where the jobs being compared were dissimilar to be brought under the broad umbrella of Title VII of the Civil Rights Act. In the *Gunther* decision, the Court opened the door to a new means of combatting wage discrimination. A year and a half ago, when you and Congresswomen Schroeder and Ferraro held the first hearing on pay equity, you discovered that the EEOC, the lead federal agency on employment discrimination, had brought no cases of sex-based wage discrimination similar to the *Gunther* claims and had no policy for dealing with charges of sex-based wage discrimination brought under Title VII. However, the EEOC assured your committees that enforcement of the law in this area was a top priority.

The purpose of my Subcommittee's hearings was to determine what the EEOC was doing now to enforce the law with regard to wage discrimination. In addition to testimony from yourself, Madam Chair, and other Members of Congress, the Subcommittee heard from advocacy groups and lawyers representing women who were spending many thousands of dollars to bring cases of sexbased wage discrimination into court. Many of these cases were originally filed with the EEOC and later in the courts because of the lack of action on the part of the EEOC. These witnesses charged that EEOC was not adequately enforcing the law and had not made any attempt to deal with this issue.

The Chairman of the EEOC admitted in the hearing that until my Subcommittee began investigating its enforcement record, EEOC had done little to enforce the law in *Gunther*-type cases, either by bringing cases to court or by investigating and attempting to resolve the many charges filed with the Commission. The Commission has now formed an internal work group to investigate some of the numerous charges that have been gathering dust in the field and Washington offices, and will be discussing them at the May meeting of the EEOC. Although our hearings resulted in the EEOC taking some action in this area, it is certainly not enough.

Your legislation is very timely in that it requires EEOC and the other responsible Federal agencies to assess their enforcement activities in the area of sex-based wage discrimination and report to Congress. By now it is clear to everyone that this Administration has the worst record of enforcement of employment discrimination laws of any Administration in history. Since no one in the Executive Branch has placed a high priority on the elimination of sex-based wage discrimination in the workplace, it is important that Congress make clear, as often as necessary, that we expect vigorous enforcement of laws dealing with discrimination.

Again, I commend you for holding these hearings and for permitting me to testify.

Ms. **Oakar**. At this time, we would like to ask the Members of Congress who have asked to testify to please come forward. Mr. Barnes, Ms. Kaptur, Ms. Mikulski, Mr. Hoyer, if you would come forward. We would be happy to have your testimony.

We are very grateful that you are able to be here. You are all champions in fairness issues. Mr. Barnes, we would like to start with you.

STATEMENT OF HON. MICHAEL D. BARNES, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. **Barnes**. Thank you very much, Madam Chair. I very much appreciate the opportunity to testify on behalf of establishing and applying the principle of comparable worth in the Federal Government. I also want to join with your colleagues on the committee in saluting you for your leadership, and your steadfast persistence in keeping this matter at the forefront of public debate.

This hearing is extremely important, and it indicates your outstanding leadership.

Since 1964, as you indicated in your statement, the laws of our Nation have required employers including the Federal Government, to provide equal pay for equal work for all employees. We have been fighting this battle for 20 years now, and we have had some modicum of success, but we have yet to win a final and conclusive victory.

The matter of paying women the same pay as men when they perform work that is of comparable value tests our Nation's willingness to finish the task of providing real economic justice to American women.

Establishing and enforcing such a standard of justice is not merely the right thing to do from the standpoint of the Nation's economic future and our ability to realize the full potential of all American workers, but it is also, I would argue, the most reasonable thing to do.

That is why I share the Chair's view that it is deplorable that the current administration has lamely come up here to Congress and literally thrown up its hands, because it says that it cannot find a reasaonable standard upon which to establish comparable worth.

The case of *AFSCME* v. *the State of Washington* clearly demonstrates that there are workable standards in the real world which can be utilized to achieve economic justice. This administration nevertheless has turned a blind eye to what was accomplished in that case for the simple reason, in my view, that it believes that wage discrimination is profitable.

Discrimination at the bottom of the wage scale depresses the entire pay scale. I suspect that there are many in the administration who think that that is a good thing.

The courts, indeed, have been split on the issue of whether job evaluations can be based on labor market factors in a nondiscriminatory manner. The court in the Washington State case had the courage, though, to recognize that the seeds of discrimination are inherent in our current labor markets.

If it is possible to compare jobs without parallel elements by a point rating system or by other means, then in my very strong view, men and women doing jobs of comparable worth should be paid equally.

As chairman of the Federal Government Service Task Force here in the Congress, I am as you know, Madam Chair, very deeply committed to maintaining the quality of our Federal Service. It has been an honor to work with you on so many issues.

I have no doubt that establishing a standard of comparable worth for the Federal Government will markedly improve the quality of the Federal Service that the American people receive from the Federal Government.

And let me just quickly list several reasons. I think, first, that it will create greater opportunity for advancement in the Federal Service to many federally employed women who have been pigeonholed in low paying dead end jobs.

Second, one of the most wasteful features of the current Federal Service is the sad fact that personal development is not emphasized and encouraged. Eliminating discriminatory pay practices would remove a major temptation to achieve short-term savings at the expense of sound management practice.

And, third, RIF's, downgradings, reorganizations, and other forms of staff upheaval in recent years have further narrowed opportunitites for women for advancement in Federal Service. Taking affirmative steps to break the stranglehold of discrimination on the pay side of the equation will provide an important boost to the morale, not only of women in Federal Service, but of men as well.

In short, comparable worth will give us a stronger Federal Service.

Two, Federal agencies, as you know, the GAO, the General Accounting Office, and OPM, the Office of Personnel Management, have already begun to take some important first steps toward Federal pay comparability.

They have begun to develop a point-factor analysis system for evaluating jobs. OPM's interest, I fear, stems mainly from a desire to review existing employee classifications. OPM believes most Federal jobs are overgraded, and its employees are overpaid. And what they are really after, I think, is not comparable worth or improvement in the situation, but really finding ways to cut pay.

In my view, classification problems are a direct result of the Government's inability to keep Federal pay scales in line with private sector pay. Managers seeking to retain top employees have engineered better pay for their people through the classification system. We should be particularly careful, as I'm sure the Chair will agree, to develop an approach to the issue of comparable worth that fully accomodates an upward rather than a downward adjustment toward pay parity.

I would strongly urge, therefore, that save pay provisions become incorporated in any approach that the committee recommends.

According to the President's pay agents, as you know, Federal employees are already 21.5 percent behind private sector pay. I think it would be interesting if the committee is able to develop the data to know just how much further federally employed women lag behind the average private sector pay for comparable work.

Our experience with Federal, non-sex-based pay comparability adjustments suggest that we must also take steps to insure that Congress does not succumb to the popular tactic of bending comparability to meet the requirements of future exercises in austerity.

I would hope that in tackling the thorny issue of job comparability we could also discover techniques that would help us bring Federal pay up to private standards.

The statistical tools developed in the Washington State case may have great promise in that regard. And I would commend them to the committee.

I sincerely hope that the administration would drop its plan to intervene in that case, because its record on behalf of both women and Federal employees has been absolutely abysmal. Both groups are expected to excell in their performance in the labor force, but neither is given encouragement or assistance. The legislation before this committee addresses both of those problems at once, and I certainly support it.

It is time we stopped paying women $0.59 for every dollar we pay men in the workforce. And, similarly, I would suggest to the committee, it is time we stopped paying Federal employees $0.79 for every dollar that a private employee makes. It is really time for all Americans to receive a dollar's pay for a dollar's work.

And, again, Madam Chair, I really want to commend you for holding these hearings, and to offer my assistance in any way that I can provide it to you and to your committee to help push this legislation. It is terribly important; it is long overdue; and your leadership is crucial.

Ms. OAKAR. Thank you very much, Congressman. And again, I want to thank you for the work that you have done.

Another champion for fairness in this Congress is our good friend Congresswoman Mikulski. Barbara, I want to thank you very much for taking the time to be here. Thank you again for your leadership in this and many other issues.

STATEMENT OF HON. BARBARA A. MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Ms. **Mikulski**. Thank you, Madam Chair. I am happy to be here. I ask unanimous consent to revise and extend my remarks.

It is a delight to be with you on this in terms of the leadership, both you and the gentlelady from Colorado, Mrs. Schroeder, have provided in giving us a framework for this important issue.

A few weeks ago I had the wonderful opportunity to be in Philadelphia to visit the Independence Hall to debate with Jerry Ford and others the issue of the Constitution and War Powers Act.

While we were debating the Constitution, and I looked around at all those pictures of Founding Fathers, I wondered what it would have been like to meet a founding mother.

Here today listening to your opening statement, and watch you chair this, I feel that we have met a founding mother. What this legislation does is continue the debate that began when we talked about the Bill of Rights, the Constitution of the United States, and the Declaration of Independence. For in our founding documents we said, "All men were created equal." But women were not included.

And even though Abigail Adams chastised John and said, "Remember the ladies, for if you do not, we will ferment our own revolution," they chose to ignore us. Now, I see that the revolution continues in this legislation.

We fought for our equal rights in the equal rights amendment. Having lost that battle, we are now pursuing it one law at a time. And your pay equity legislation is an important step.

Pay equity simply put, is a policy which calls for correcting the practice of paying women less than men for work that requires comparable skill, effort, responsibility, and working conditions.

Pay equity is a method of closing the wage gap between men and women.

And what essentially pay equity would do, is put fundamental fairness in our law books and in our check books. And we salute you for that.

However, our pursuit for something so simply put has not been easy to put into place.

Despite the passage of the Equal Pay Act of 1963 and the Civil Rights Act of 1964, women still only earn 60 cents to that dollar that men earn. Two out of every three women are in poverty.

The insidious persistence of this gap reflects, in large part, the occupational segregation—some would say the ghettoization—of women into a narrow spectrum of low-paying jobs.

In 1983, about 80 percent of working women were in low-paying, low-status, deadend jobs in service, retail, factories. These traditional "pink collar" jobs constituted only 20 out of the over 400 occupations listed by the Census Bureau.

Right now many State and local governments have tried to respond to this issue. My own State has passed a resolution affirming the policy of comparable pay for comparable value, but resolutions do not mean anything. It is the laws that do it.

And it is our feeling that if the Federal Government cannot take the leadership, how then can we challenge the private sector.

Now, Madam Chair and members of the committee, you are going to hear a lot of opposition to this bill. The opponents are going to say a lot of things. The opponents are going to argue that it is impossible to compare jobs. But the differences can be quantified according to training, experience, knowledge, decisionmaking. Objective standards of these are as part of any responsible job obligation. Therefore, it is only reasonable that they be used to compare and contrast jobs in order to achieve a balanced and just pay scale.

Opponents will argue that the law of supply and demand will determine salaries—kind of supply-side economics in the marketplace. Yet, the critical shortage of nurses has not resulted in fair compensation for their services. For example, in 1981, a full-time R.N. earned an average of $331 per week. This is less than a ticket agent, an electrician, a drafter, occupations which are held predominately by men. Yet their responsibilities and education would warrant comparable pay.

Also, opponents argue that the policy of pay equity cannot be implemented because it just cost too much. Well, our answer to that is that it cost a lot to be a woman in our society. By the mere fact of earning less, we will then get less in our pensions; and you and I know that in fair insurance, insurance has not been fair, that we pay more and get less.

But when they say it will cost too much, our opponents must know that cost is no excuse for discrimination.

In the past, opponents fought against child labor laws because they said it would cost too much to take 9-year-olds out of sweatshops.

Opponents fought against the minimum wage. Opponents fought against health and safety laws because they said it was too expensive. And we say, that's no reason.

It is time to acknowledge that pay equity is a fundamental civil rights issue. It is time that sex-based wage discrimination must be actively outlawed, just like race-based wage discrimination.

The jobs performed by women are vital to the support and the development of our society.

Therefore, I urge my colleagues to support these measures which establish the policy of pay equity and begin to provide us with that.

And I am very pleased that shortly you will hear from two very important women on this issue: Joan Mondale who will be speaking on this issue and will be introducing a folk hero to us, Glennis Ter Wisscha of the famous Willmar Eight, the brave women who made history on pay equity.

I thank you very much and look forward to working with you on this legislation.

Ms. OAKAR. Thank you very much, Barbara.

Our next witness is Congresswoman Kaptur. As a member of the Ohio delegation, I was always a little bit lonely until Marcy came. She is the second woman from Ohio, and she is a leader in issues that relate not only to women, but to the business community and others.

I am very proud of you, Marcy, and want to thank you very much for being here today.

STATEMENT OF HON. MARCY KAPTUR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Ms. KAPTUR. Thank you, Madam Chairwoman and members of the committee. I think that I want, as my colleagues have, to thank you for your continuing sensitive and practical leadership in this important issue of pay equity.

And, Madam Chairwoman, I would like to say that, it is interesting that you and I represent fully 10 percent of the women in Congress being just from one State; and there are so few of us. I think that was one of the things that surprised me when I got here.

I would like to express my strong support for the two bills before us. In preparing for today's remarks I went back to the oversight hearings that were recently held on the issue of equal pay for work of comparable value. And I found a quote from Margaret Meade that I would like to reread into the record in which she says as a teacher to the world, really,

> There are villages in which men fish and women weave, and in which women fish and men weave. But in either type of village, the work done by the men is valued higher than the work done by the women.

And, I think that is why we are here today.

The women have made tremendous strides in the past 20 years in their participation in the work force. It is increasingly clear that participation is not enough for women to assume their rightful position as equal partners in the future of this country. I think that there is plenty of room for improvement, even in this body, in this House itself, where there are only 22 women of 435 Members of the House.

Further, work participation does not necessarily insure economic prosperity for women workers. The issue extends beyond having jobs to the nature of the jobs themselves and the compensation received.

Here in the House as Members we are on an equal footing. But figures are well known on the double standards that affect advancement for women on support staffs.

Upholding the principle of equal pay for equal work is critical to all women in the work force and it is proper that we begin here. In particular, women do not receive equitable compensation in two types of cases.

First, and most blatantly, women performing the same work as men do not always receive the same compensation.

Second, women are often underpaid because the occupations they work in are underpaid, relative to other occupations. This wage differential is not based in differences in productivity.

As a district court in Washington found last year, and others have mentioned, female State employees were paid less than men even though their jobs required similar skill, effort, responsibility, and working conditions.

The net result is a substantial wage differential. Women's wages average about 62 percent of wages for men. And serious problems accompany these lower wages. All of us who serve in this House know the people that walk into our offices on a daily basis.

The trend toward the feminization of poverty includes many women who work full time and, still, they and their families remain poor.

Both H.R. 4599 and H.R. 5092 would take significant steps toward solving the problem of wage and equity. H.R. 4599, the Federal Employee Pay Equity Act of 1984, would prompt the Federal Government to take the lead by establishing equitable wages for its own employees.

Before the Government demands more of private sector companies, it is appropriate that it uphold the principle of pay equity in its own companies, including this House.

The second bill, the Pay Equity Act of 1984, requires selected Federal agencies to report actions taken to enforce Federal laws prohibiting pay discrimination on the basis of not only sex, but also on the basis of race, religion, or national origin.

As has been made clear in the past few years, the level of enforcement of Federal laws depends on the administration in office.

Pay equity should not be subject to the whim of the politics of enforcement officials. It is a principle that should be upheld at all times, and a reporting procedure would help eliminate lax enforcement.

I commend the Chair for her leadership in this area. I hope Congress will move quickly to pass these important bills that promote economic progress and equity for women. And it has been a pleasure to appear before you this morning.

Ms. **Oakar**. Thank you, Congresswoman Kaptur.

Now I would like to recognize one of the distinguished minority leaders of the full committee.

Mr. Gilman, would you like to make a statement at this time?

Mr. **Gilman**. Not at this time.

Ms. **Oakar**. Thank you very much for being here.

I would like to ask Congressman Hoyer if he would like to present a statement for the record. Congressman Hoyer, of course, is another fine leader in this area. We are very happy that you could come for this hearing.

STATEMENT OF HON. STENY H. HOYER, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. **Hoyer**. Thank you very much, Madam Chair. I just turned to the next First Lady, and said to her that you will note that three out of four at the table are from Maryland.

I am very pleased to be here to join you today, Madam Chair. I am especially pleased, having had the proud distinction and honor of being a member of your subcommittee, which you have chaired so well over the years that I have been in Congress.

In the past 30 years, as you know, 60 percent of the people newly entering the labor force in this country have been women. It is anticipated that in each year of the next decade, 1 million additional women will join them. More than half are women with children under 18.

These official statistics reflect the notion that the so-called flood of women into the marketplace is a relatively recent phenomena. The truth of the matter, however, is that women have always worked. They just have not always been recognized and fairly compensated for their labor.

As far back as 1870, close to 30 percent of the households in Baltimore, Md., which Barbara Mikulski represents so well, relied in some way in female-generated income. By 1900, that number had risen to 40 percent. While the number of women in the compensable labor force has almost doubled in the past 44 years, the reason for this entry has remained relatively the same—economic necessity.

Despite the rapid growth of women in the labor force, they still remain concentrated in certain industries and occupations—this has been brought out at almost all of the hearings that you have held, Madam Chair—and they have been earning substantially less than their male counterparts, the rationale and reason for these hearings and this legislation.

Despite the rapid growth of women in the labor force, as I said, the majority of women, working women, fill only 20 percent of the 441 occupations listed in the census' occupational classification system, 80 percent in four job fields: Clerical work, service industries, retail sales, and factories and plants.

Of the 10 lowest paid occupations, 6 or 90 percent are filled by women; 84 percent of our health aides are women, 85 percent are nurse's aides, 63 percent are cooks, and 13 percent are foreign laborers.

Today the median wage for full-time women workers is $12,172. For full-time men, that figure is $20,682. Using these statistics, it takes women 9 days to gross what men gross in 5 days. And the Federal Government, Madam Chair, is no exception, where the average salary for men is $30,553, and for women it is $15,579, little more than half.

I know that I need not go any further with these statistics. You know them well, clearly better than most of us in this room. But they are staggering.

Women are not marginal workers, and can no longer be regarded as a limitless pool of cheap labor. Occupational segregation is extreme and it is persistent. Within the Federal Government, there is a statistically significant inverse correlation between sex and salary in the general schedule and equivalent grade.

But it is not only the Federal Government that shows this segregation. We need go no further than to make a cursory examination of the crisis in this country's educational system. The teachers of this country have been predominantly women, and as such our educators have historically been underpaid.

Despite the fact that we entrust the intellectual instruction of our children to them, despite the requisite skills demanding responsibilities and extensive training that we demand of our educators, and because it is an occupation historically filled by women, teaching has become a second-class job, and one vastly undervalued.

We are now being forced to see the long-range effects of this occupational segregation, as our most qualified and educated women look to other more highly paid fields of endeavor. This phenomenon unfortunately and tragically is not unique to education.

More and more women are rapidly entering areas previously dominated by men—law, medicine, politics, space exploration, engineering—where they can be more fairly and equitably compensated. It, of course, is appropriate that they look to those fields.

But it has had a significant effect, and has dramatized the undervaluing of critical services for clearly comparable worth.

Sex discrimination is costly in the long run. What we see happening is that jobs traditionally filled by women, jobs undervalued precisely for that sole reason, will become harder and harder to fill with quality people, as our top-notch women seek careers that are more financially rewarding.

In the landmark school desegregation case, *Brown* vs. *Board of Education*, a unanimous Court stated that segregation and equality cannot coexist. This applies equally to occupational segregation which has invariably led to wage discrimination, which brings me to the real issue that we are confronting today, sex discrimination.

It is invidious and devastating, and it is pervasive throughout our society. We at the Federal level have an opportunity to do something about this discrimination, and not only by adopting needed legislation which this committee is considering.

We must begin as the Chair has with our Federal system. We must look at the Federal classification system, and make a position to position comparison of cross-classification group lines. The Federal Government should be a model for others to follow. This is true as well for our State and county governments.

Putting an end to exploitation clearly will not be without its costs. Pay equity is a difficult issue. We are confronted with an administration intent on diluting the scope and strength of existing civil rights laws, and one that has steadily retreated from enforcement of those laws.

But obstacles must not and cannot be a consideration in promoting and enforcing civil rights. Madam Chair, by assuming the leadership role in promoting pay equity and by vigorously pursuing the inequities resulting from discrimination in our society, you are proving that the barriers will be and must be overtaken, the course made smooth and less difficult by your efforts.

I am certain that with your leadership and commitment, and the leadership and commitment of all here today, that we will succeed. The bottom line on the issue of equal pay for comparable work is nothing more and nothing less than the issue of equal rights for women, and indeed equal rights for all people.

Thank you very much, Madam Chair, for this opportunity to appear before you on this important issue.

Ms. OAKAR. Thank you very much, Congressman. The Chair would like to thank all of her colleagues for coming today.

As I mentioned, we asked another candidate to be present and he was not able to make it. But we want to make it clear that we did invite the President to be here as well.

I want to thank Mrs. Jacqueline Jackson for being here today. I know that you join us today to talk about the important issue of pay equity for women, as you work—as well as Mrs. Mondale—tirelessly to enter the most exclusive female-dominated occupation of them all, the First Lady.

And I should add that we do hope someday to make that job category one that includes men as well. I am delighted by your personal concern and commitment to this issue. Our Nation's history sparkles with examples of First Ladies such as Eleanor Roosevelt, who have been activists in the White House, conscious of the need for economic justice, the arts, humanities, and most importantly, fairness and decency for all Americans.

Mrs. Jackson, the area of civil rights is certainly no stranger to you. But I wanted to mention how grateful the Chair is for your activities. You have been actively involved in promoting equality for all Americans since you attended high school in Virginia. You have a degree in psychology and sociology giving you an understanding of pay equality for women. I am certain that your testimony will highlight a side of the working woman's plight that is very often ignored.

We know that you have a certain time restriction; and I am going to ask my colleagues to respect that. We would like to have you present your statement in any manner that is most comfortable for you. Thank you very much for being here.

STATEMENT OF JACQUELINE JACKSON

Ms. JACKSON. Thank you. First, I must apologize because I had intended to be available for questions. But due to a death in my family, I must leave shortly afterward.

Nevertheless, Madam Chairperson and members of the Subcommittee on Compensation and Employee Benefits, I am Jacqueline Jackson, and I welcome this opportunity to appear today on behalf of my husband's campaign.

One of the most vital and key messages of my husband's campaign for the Presidency is that the rights of all of the people stand or fall together. I open my comments this morning with one important illustration of our continuing and urgent need to change the inequitable conditions that women face.

It is the Justice Department's recent and temporary successful attempt to narrow the scope of enforcement of title 9 which protects American women from sex discrimination in education. The Justice Department went after the very language in title 9 which would do maximum damage to all of the other laws protecting groups against race, handicap, and age discrimination as well as sex discrimination.

My husband has endorsed the civil rights clarification bill to be announced this week, that if passed will end the damage wrought by the present administration in the *Grove City* case.

When I learned that you were holding hearings on pay equity, the words came to mind again of a great woman who was a fighter for civil rights and who led the 1964 fight for equality in the Democratic Party. I am speaking of Fanny Lou Haymer, who spoke the truth and spoke it from her heart.

She said, "I am sick and tired of just being sick and tired." To sum up what Ms. Haymer said about her feelings, she was referring to issues constantly being discussed rather than being resolved.

I am here today to speak about dollars and equality in the spirit of Fanny Lou Haymer. Let us cease the discussion of this inequality, and let us begin to resolve this issue immediately.

My husband and I have devoted our lives to the fight for justice, equality, and a peaceful world. As a daughter of sharecroppers, I am familiar with the sight of men and women working side by side in the fields. I have from my childhood days in Florida been associated with life's beauty, pain, hopes, dreams, and struggle. I know the history of people in poverty, people who are trying desperately to maintain a household. My authority for speaking here today is rooted in my womanhood. And the history of the people who have always worked and received little or no pay.

I am the mother of five children. I know intimately the joy and anger, anguish of watching one's children grow with the ceiling to their aspirations and no floors to their despair. I am drenched with the knowledge of the suffering of people: Men, women, and children.

We have struggled for our dignity from the first day that we arrived on these shores as America's free labor force.

I am aware of this historic fact that women of color in America have experienced the triple burden of working in servitude, working in the family, and working in the work force.

I am painfully conscious of the fact that women have been persevering so long for dignity. When women must struggle in this country, the children suffer. A nation's greatness can be measured by how it treats its women. All of its women regardless of their diversity.

The character of a nation is measured by the attention given to the suffering of the young.

Our struggle for dignity has taken place on the farms, in the homes, in the streets, and in the legislature. Blacks and Hispanic women have shouldered disproportionally the burden of menial jobs in this society with the accompanying benefits of low pay and long hours.

These women often had to work just to keep their families intact. More families headed by women raising young children are experiencing a steady decline in their economic status.

This, combined with race discrimination and sexism, is the labor market. And this labor market has locked women out at best into a combination of welfare and marginal work.

As we witness a significant rise in the number of female heads of household, we must ask what becomes of a woman raising a family alone. She becomes another victim of poverty. Poverty that is increasingly becoming equated with onegender done. We call this phenomenon the feminization of poverty.

One in every three families headed by women live in poverty. Female heads of household represent 15 percent of all families, but half of all poor families; 18 out of the 20 lowest paid occupations are occupied predominantly by women. Older women and women of color are especially disadvantaged.

The Federal Government is the largest employer of women. But in Government, again, women are constantly traded in traditionally female jobs, which represents 76 percent of the lowest paid positions. And while there are approximately 46 million women workers, 75 percent of them are single, widowed, divorced, or married to men who earn less than $10,000 a year.

Let us look for a moment at disparities in income. White women earn 60 cents for every dollar earned by white men. Black women earn 56 cents; and Hispanic women earn 52 percent. The medium income for black children under the age of 6 with working mothers is two-thirds that of white children. Black children's mothers work an average of 37.8 hours per year longer and receive less money. 70.1 percent of all black children live in families whose incomes are less than twice the poverty level. Most of this Nation's poor are white.

As we confront the issues of pay equities, it is important for us to link this with the inequalities of work fair. This new idea had its beginning in the misconception that people enter the welfare system to escape from earning a living by working. The poor are forced into the welfare system out of necessity to survive; the necessity to survive.

The rise and the need for public assistance is a byproduct of the sorry state of the economy, the impact of which is felt most acutely by poor women.

The issues of work fair and pay equities are interrelated. It is providing women who are stuck at the bottom, and confined to traditional female jobs. It is forcing them to move to public assistance. I assure you this is not the answer.

Every woman's labor must be fairly compensated. Work fair does not work and it is not fair. We have the utmost faith in our Nation. If only it can find the courage to deal honestly with the problems which America faces.

Therefore, I appear here today to support H.R. 4599; and H.R. 5092, in the hope that passage of these two bills will correct these inequities too long ignored and right these injustices which adversely impact on women.

It is our position that pay equity for all workers is and will remain one of the dominant issues of the 1980's. It underscores the issue of equality for all women.

The Federal Government has a responsibility to take the lead in erasing the inequities by setting the foundation for parity, that must be applied in the private sector.

The issue of adequate job evaluation is critical for job parity.

We support this position of the National Committee for Pay Equity on evaluating job categories by using a point system to compare salary levels. Comparable worth is emerging as a fact of life. The fairness principle is embedded in this movement, and it cannot be ignored.

We applaud those States and local governments that have already taken the stand in favor of pay equity, whether due to voluntary initiative or to citizen demand. Such efforts prove that support from all sectors of our society is and will be key in dismantling work force segregation to the benefit of us all. Just as Fanny Lou Haymer challenged injustice, we must continue to do so. In the certain knowledge that as we improve conditions for women, we are building a better America.

I am grateful for this opportunity to be with you this morning. Thank you very much.

Ms. **Oakar**. Thank you very much, Mrs. Jackson, for your eloquent and moving statement. The Chair and members of the committee are very grateful to you and Reverend Jackson for your appearance here today.

Thank you very much.

Our next witness is Mrs. Joan Mondale, who is representing Vice President Mondale.

Joan, if you would like to come forward. It is the Chair's understanding that you are accompanied by Glennis Ter Wisscha, who is a modern day hero to some of us. We are very happy to have you here.

Joan, many of your friends and admirers, including the people in Cleveland that you helped so much in the area of arts, call you Joan of Art. We think that you have made a great contribution to the growth of the arts and humanities. Your leadership in that has been truly outstanding.

You have also been a leader in an issue that affects all women—the issue of fairness.

We are grateful that you could come today and bring Glennis with you.

Joan, you may proceed in any way that is most comfortable.

Thank you very much for being here.

STATEMENT OF JOAN A. MONDALE

Mrs. **Mondale**. Thank you. Thank you, Chairwoman Oakar. It is an honor for me to appear before your subcommittee this morning, focusing on pay equity.

You are addressing an issue of deep personal commitment on Fritz' part and my part, because pay equity is one of the most fundamental issues of economic justice in our time.

More than 20 years ago, when Congress enacted the Equal Pay Act, the average full-time woman worker earned about $0.60 for every dollar earned by a man. And since then we have sent astronauts to the Moon and we have cracked the genetic code. But we have not narrowed the gender gap in the wages of American workers.

Today, we must address this fundamental breach of economic justice. And the bills that you are considering would require the Federal Government, our Nation's largest employer, to abide by its own laws. They would have a tremendous impact on the over 1 million women who work for the Federal Government. And it would be the first step toward changing the policies of private employers.

These bills would build upon other recent steps toward pay equity. As Vice President, Fritz was proud to have worked for the passage of the Civil Service Reform Act, which required equal pay for work of equal value in Federal jobs. And he was proud to work for the signing of the Executive order that prohibited gender-based discrimination by Federal contractors.

And in his Presidential campaign, my husband has also proposed a 5-point plan that would continue his fight for pay equity. His plan includes:

First, directing the Equal Employment Opportunity Commission to publish guidelines on what constitutes gender-based wage discrimination;

Second, appointing people to the EEOC, Department of Justice, and Office of Federal Contract Compliance, people committed to pay equity;

Third, directing that the Federal wage scale be reviewed to eliminate discrimination;

Fourth, establishing a Federal pay equity clearinghouse; and, last, perhaps most important,

Fifth, making the Oval Office a place of moral leadership on the subject of pay equity.

Pay equity is a family issue and it is a poverty issue. It is an aging issue, because retirement benefits are often based on wages. And it is a racial issue, because black and Hispanic working women are plagued by poverty far more often than men or white women. But, above all, it is an issue of human dignity.

There is no one in America more qualified to address this last point than the next witness, Glennis Ter Wisscha. She is one of the Willmar Eight. A group of eight Minnesota women so outraged by the injustices of wage discrimination that they sacrificed their jobs, their livelihoods, and 4 years of their lives to fight.

In today's hearings you have heard a lot of statistics and explanations, but I doubt if you will hear anything more compelling than what Glennis Ter Wisscha has to say this morning.

Hers is a story of millions of American women who must suffer the pain of being paid less than they know they are worth.

As a woman, and as the mother of a daughter who has just started her career, and as someone who has talked to thousands of women during this last year all across the country, I applaud your efforts as the first step toward insuring that the story of the Willmar Eight will not be repeated.

Thank you.

Ms. **Oakar**. Thank you, Mrs. Mondale.

And, Glennis, we would be happy to hear from you at this time.

STATEMENT OF GLENNIS TER WISSCHA

Ms. **Ter Wisscha**. Thank you, Joan. And thank you, Chairwoman Oakar.

If I start booming as I get excited, please let me know.

Ms. **Oakar**. That is all right. You can boom all that you want.

Ms. **Ter Wisscha**. Thank you. I am very honored to testify before the subcommittee today on an issue of tremendous concern to me and to American women all over, and that is pay equity.

I would like to tell you a little something about my experience with this issue, and I will be able to answer, hopefully, all the questions you may have for me later.

As Mrs. Mondale told you, I am from Willmar, Minn. I was born there; brought up near there, and after I graduated from high school, I worked there. And I guess that is where the story really begins.

In October 1976, when I was 18, I interviewed for a job at the Citizens National Bank in Willmar. I got the job for $100 a week

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gross salary. That was not much money, but then again, none of the women at the bank earned that much. Irene Wallen, who had had almost 20 years of banking experience was grossing $565 a month.

After I had worked there for 1 month, the bank hired a new employee. A man. Although, he had absolutely no banking experience, they hired him at a salary of $700 gross a month.

The bank president told us that we would train the new employee, and once he had learned everything that we had to teach him, he would become one of our new bosses. None of us had been given the chance to apply for this position. I did not mind it so much for myself, I had only worked there 1 month, but I was concerned about the other women; most of whom had worked in that bank for many years.

I complained about it to my mother, who worked in a bank in the early 1950's, and she said, "But, Glennie," she said, "it was that way when I was in the bank, and it will probably be that way forever." And I guess that is really when I started to get angry.

I did not want to have to live in a future where, should I have a daughter, I would have to tell her at some point: "But, dear, that is the way it has always been, and that is the way it always will be." I thought how I would feel if she came home and cried on my shoulder about this same problem. I could not tell her that I had been in the same position and did not do anything about it.

So, with the other women I filed a lawsuit in mid-November 1976. We did not think of ourselves as feminist. To us at that point, feminists were radicals and we did not want to be that.

We were optimistic. Looking back, I would say naive about our chances. We thought it would take us 1 month to get a decision down from the EEOC. But as delay followed delay, we realized that it might take years.

We decided that the only true way to fight was to organize a union, so we could negotiate a nondiscrimination clause in our contract.

We had our union election in May; and in June we started negotiations. Looking back at it now, I think that the bank decided that beating us would not be enough. They wanted to literally humiliate us.

The chairman of the board read a newspaper during negotiations and during our bargaining sessions. And the sessions, first negotiations, and then mediations, dragged on and on. Meanwhile at the bank, things were getting worse.

The nonunion tellers worked all day in the indoor teller windows, while the union tellers were assigned to work at the drive-up window. It was not insulated, and temperatures inside the windows dropped 20° from the inside temperatures.

We filed 16 unfair labor practice complaints before we decided to strike. We struck on December 16, 1977. I do not know how many of you have ever experienced a Minnesota winter. But to say that it is cold is being quite reserved.

Ms. OAKAR. I am from Cleveland, I understand.

Ms. TER WISSCHA. This particular winter of 1977 and 1978 set all new records for wind chills, which were probably broken in the winter of 1983-84. But we decided, the eight of us, that the strike was our job, and that we would be on that job every minute that the bank was open.

The eight of us would start to work at 8 in the morning, and 9 some of us would take a half-hour break sitting in a car that we kept running in front of the bank getting ready for our next shift. Then we would go back on the line and so on.

When the wind chill temperatures dropped to 75 degrees below zero, our eyes would freeze shut. And on our shift, we would have to thaw them out with the palms of our hands. So it went until the bank closed at 5:30. And so it went day after day through the winter and into the spring when our NLRB hearing was delayed. And ultimately through the summer, fall, and winter until the NLRB handed down its decision in the spring of 1979.

I will talk about that decision in a moment. But first I want to talk about what kept us going. Part of it was our confidence in the system. We were sure that we were right, and we believed that we would get justice.

A lot of it was just plain pure anger. We were mad at the bank for refusing to see our case. We were mad at the scabs that they hired to do our work, and mad most of all at the system that allowed it to happen.

But what kept us going most of all was inside of us, we each felt a bit of pride and outrage, a sense that we would be vindicated and that justice would prevail. We had little else. We had no money, we had no jobs, nothing but our picket line, our pride and each other.

If we had given them up, we would have lost everything. So there was not any way that we could quit. But it was not just our pride that was at stake, but it was the pride of women all over the country. As the newspapers picked up our story, it seemed that everyday that we would get letters saying, hang in there, you are fighting for me, too.

I still remember the letter that we got from a woman working in a bank in Georgia. She told me that the conditions were just as bad there where she was, but that she could not afford to lose her job by organizing and inevitably striking.

Her letter was full of rage, pain, and frustration. The sense that an injustice had been done to her, but that her hands had been tied. She was so frightened that she would lose her job that she counted on, that she did not even sign her name. After five pages, she signed it anonymous.

We were frightened, too, but at least we had each other. When one of us had a bad day, the other seven would pick us up. Through the 18 months that we were on strike, we never broke down at the same time until the NLRB made its decision and we lost.

The NLRB ruled that the bank practices were not the cause of the strike. Of the 16 unfair labor practices, only 2, 1 of them that the bank had failed to invite union personnel to a company picnic, were upheld.

The bank was only forced to post a notice on the bulletin board for 60 days saying that they would not discriminate against union personnel in the future, and to later by attrition to offer us back our jobs by seniority. That is when we all cried.

We crossed out the word strike on our picket signs, and bannered the bank for months afterward, so that everyone in the community would know that the bank was guilty of unfair labor practices, but it did not matter. The people in Willmar just knew that we had lost. And in a way, of course, we had technically.

But the funny thing is we won. Another bank in Willmar organized not long ago, and it went smoothly and quietly. I got called back to work at Citizen's National in October 1980. And to my satisfaction, I resigned soon after.

But most important, we were proud about what we did. I would do it again. And I think that I could comfortably say that the other women would, also. We had absolutely nothing in common. We span more than 20 years, practice different religions, came from different backgrounds.

The only thing that we found to have in common was that we worked at Citizen's National Bank, and we were women. We also had pride. And that is probably the only thing that survived.

Far too many women have been forced to give up, and I guess that is why I am here today. I am speaking not for just myself here, but for every woman who is in indignity of being paid less than she is worth.

Millions of American women will never have college degrees nor professional jobs. For them work means the daily grind in offices, factories, hospitals, and schools. But they deserve the pride that comes from doing a job well and being paid fairly. They deserve their pride in themselves.

Today with these hearings, you are beginning to recognize the claims of pride. Walter Mondale, whose wife Joan introduced me here today, has made the fight for pay equity a central issue in his campaign. The issue is justice, nothing more, and nothing less.

I still believe after the experiences that justice can and will be done. I thank you.

Ms. OAKAR. Well, we want to thank you for your very important testimony, because yourself experienced the pain and indignity of not being treated fairly. And for you to come forward is very important to this committee.

I will ask my colleagues to limit their questions to about 2 minutes each, because of the time restraints of the witnesses.

Mr. Bosco, do you have any questions?

Mr. BOSCO. Thank you, Madame Chairman. I have no questions. I simply want to express my gratitude to Mrs. Mondale and Ms. Ter Wisscha for very fine testimony that I am sure that we will keep in mind as we review this legislation.

Ms. OAKAR. Thank you. Mr. Gilman.

Mr. GILMAN. Thank you, Madam Chair. I want to thank the witnesses for appearing here today.

I would like to ask, Glennis, just what did EEOC do with regard to your case, how effective were they?

Ms. TER WISSCHA. Well, the lawsuit initially involved 11 women. The total back pay allotted to us by the EEOC was $11,700. That had to do with injustices dating back 20 years. The EEOC was basically the monetary result. It had no effect on our negotiations nor on our strike. They were two separate issues.

However, during negotiations, we did sign an out-of-court settlement with the EEOC in an attempt to get a contract. It obviously did not work.

Mr. **Gilman**. At what point did you sign the agreement with EEOC?

Ms. **Ter Wisscha**. Well——

Mr. **Gilman**. How long after you filed a complaint?

Ms. **Ter Wisscha**. At this point, I would say that it was very rapid. We filed a complaint in October 1976, and we signed off on it, I believe, in November or December of 1978.

Mr. **Gilman**. And thereafter, there was not any further activity by EEOC, is that correct?

Ms. **Ter Wisscha**. That is correct.

Mr. **Gilman**. But that was at your own voluntary action?

Ms. **Ter Wisscha**. Yes.

Mr. **Gilman**. As far as you know, did the EEOC respond in an expeditious manner in handling your case?

Ms. **Ter Wisscha**. Well, sir, we do have some complaints about the way that the EEOC handled our particular case. It was obvious that the attorney that was given to us by the EEOC had been subjected to quite a few pressures. She and I had gotten into quite a few verbal arguments over the telephone.

And at one point she said, "How do you expect me to get a settlement when the bank is sitting across the desk from me, and calls are coming over from all over the country telling us to settle?" And I got a very desperate feeling from her as far as her responsibility.

We did bring it up to Eleanor Holmes Norton, who was at that time the head of EEO. And she wrote us back a letter saying that after reviewal of the case, she felt that it was a fair and equitable settlement. And we left it at that.

Mr. **Gilman**. Thank you. Thank you, Madam Chair.

Ms. **Oakar**. Thank you very much. Mr. Leland.

Mr. **Leland**. Thank you very much, Madam Chair. I really appreciate the testimony. I feel rather empathetic with you. At one point, I worked at a can company, and I refused to do a job that I was not classified to do minutes before it was time for me to go home.

It took 9 months for the union to finally settle the problem with the company. However, they refused to give me back pay, so I told them where to take the job.

Ms. **Oakar**. And here you are.

Mr. **Leland**. And here I am. I will fix them. [Laughter.]

Your testimony is rather compelling. I really appreciate it. I am really happy that all of you could come here today, particularly in the middle of your campaigns to be First Lady, to dramatize what it is that women are seeking, that justice is what you are talking about.

I think that we need to address this issue at all times, not just at campaign time, until there is equality for all people.

Mrs. Mondale, I would like to ask you one question. If we pass the ERA, would we still have to sit here and hear problems such as those we are hearing today?

Mrs. **Mondale**. I think that the equal rights amendment and pay equity go hand in hand. Equal rights is translated into equal pay for work of comparable value.

Mr. **Leland**. Well, the reason that I ask the question is terribly partisan. I apologize to my colleagues on my left, my far left if you will, if I insult them by being so partisan, but I am very disgusted at the fact that this President will support the ERA and will not support pay equity for women. He has created an environment that is rather contrary to the interests of equality and justice.

I know that you agree with me, and you do not have to respond. I am just so proud that you would be here today doing what you are doing.

Thank you, Madam Chair.

Ms. **Oakar**. Thank you very much.

Mr. Albosta, you are a member of the committee. Would you like to make a brief statement, and perhaps ask a question? Thank you for being here.

Mr. **Albosta**. Thank you very much, Madam Chairperson. I feel very honored to be here today. Because the Subcommittee on Human Resources is also looking into the question of equity for women. Not only equity in pay, but equity in employees in the Federal Government being RIF'd, whether the job opportunities are given to that group of people, whether our human resources within the Federal Government are treating women fairly.

And I appreciate very much listening to you, Mrs. Mondale, telling about the plan that your husband has. I wish him all of the success in the world. I hope that he gets to implement that.

But more than that, I think that the case in Minnesota where the lady stood up and was counted is the kind of action that I think moves Congress, moves people in the Nation to believe more that women should have those equal opportunities and those equal pay opportunies that go with that.

And to all of you, I just want to commend you. I do not have any particular questions. But I would like to ask the chairperson for unanimous consent to enter my statement into the record at this point.

Ms. **Okar**. Without objection.

Mr. **Albosta**. Thank you.

[The statement of Mr. Albosta follows:]

STATEMENT OF CONGRESSMAN DON ALBOSTA

Madam Chair, thank you for the opportunity to present this statement to the subcommittee today. I commend you for continuing to demonstrate your leadership on the issue of equal pay for comparable work.

The Subcommittee on Human Resources, which I chair, has worked closely with your subcommittee, in an effort to determine the causes for lower pay in occupations which are predominantly held by women. The Post Office and Civil Service Committee is particularly concerned with pay equity in the public sector, and I believe the Federal Government should play a leading role, as an employer, in the struggle to achieve equal pay for women.

Last March, I joined you, and a number of our colleagues, in requesting that the General Accounting Office (GAO) conduct an in-depth review of pay equity in the Federal government. I believe that this study will help clarify the causes of inequities in pay for women, and determine how evaluation and classification systems used in the Federal government may be improved, to eliminate these inequities. As you know, GAO has already completed a portion of this study, which examined revised classification standards for Federal librarians. GAO isnow reviewing several

Federal evaluation and classification systems, as well as systems used in the private sector and by State governments. I am hopeful that we will be able to determine, from this portion of the study, where biases exist in evaluating positions held mostly by women.

The Subcommittee on Human Resources also has jurisdiction over reductions-in-force, which may result from agency reorganizations or contract conversions, and I am concerned about the effect of RIFs on women in public service positions. As you know, many agencies are now reviewing the possibility of contracting out Federal libraries, and other activities employing many women. I believe the legislation you are considering for pay equity in both the public and private sectors, will help ensure that women who are involuntarily separated from the Civil Service can receive equal pay for similar positions in the private sector.

I look forward to continuing our work on the issue of pay equity for Federal workers. With the GAO study and the hearings you are holding this week, I believe our Committee is taking the first steps necessary to ensure that women in the Civil Service receive the financial benefits commensurate with their work product and qualifications.

Ms. OAKAR. Glennis, if I could just ask you one quick question. You went through that ordeal. Obviously, you are close to the Mondale family, or you would not be on the same panel.

What advice are you going to give to Vice President Mondale and Mrs. Mondale to remedy the pay inequity among women. What specific advice can you give them?

Ms. TER WISSCHA. I guess in reading over the literature that I have gained from various people on Mr. Mondale's stand on pay equity, I find that he is very, very much educated in that area, and I am not sure that there is much that I can say that could add to his knowledge at this point.

However, I think that whatever happens and whatever thought comes in in relation to pay equity, that the consideration for cost of its implement be put aside in any able way. The question of how much justice costs makes me really embarrassed that it should even have to be raised.

It is a fact that women have been paid inequitably for thousands and thousands of years. I do not think that anyone expects an immediate remedy. But I think that it is something that should be expected and anticipated for.

Ms. OAKAR. Joan, how do you see the Mondale Presidency implementing fairness for more than 50 percent of this country's population in the area of pay equity?

Mrs. MONDALE. I think that there is a certain amount of moral leadership that can be exerted to set a standard.

I think closer attention to budget considerations, to pieces of legislation that affect women and affect their ability to raise their families.

At one time Fritz had a family-impact statement which he proposed be attached to each piece of legislation that was passed by the Houses of Congress, which I think is a very good reminder of how often unwittingly laws are passed that really damage the family or damage a woman's ability to support the family.

Ms. OAKAR. Thank you.

I want to thank all of you very much for coming. We know this is a busy time for you, and we know that your schedule necessitates that you leave at this time.

I know Judy Goldsmith is here from NOW, and the NEA president and all your good friends. But the Chair would like to extend to you the courtesy of thanking you and asking you to stay, if you can. If you cannot, we understand.

Thank you very much.

Our next witness is representing candidate Gary Hart. Last night we found out that Mrs. Lee Hart was unable to attend. But I cannot think of a better representative to substitute for Lee and Gary, than Lee's sister, Martha Keyes, who was one of the distinguished people in this Congress for many years.

Martha, if you would just come forward. Representative Keyes, as a Member of Congress, personally worked tirelessly on behalf of women.

I had the pleasure of working closely with Martha on another issue that is interrelated to pay equity, social security. There is a thumb rule that says, if you are paid poorly when you are younger, you are bound to be poor when you are older.

Martha, we are delighted that you are able to be here. I know that if I could not make an engagement, I would certainly send my sister, Helen.

Thank you for taking the time to be here.

Martha, you know more than anyone, the rules around here. You can proceed according to whatever is most comfortable for you.

STATEMENT OF MARTHA KEYES, FORMER REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Ms. KEYES. Thank you, Madam Chairwoman. And it is a delight to be here. And if I could speak personally first, I want to thank you for what you are doing in this hearing to bring attention to this.

I think the idea of inviting the Presidential candidates to come themselves or be represented here is wonderful; and the evidence of the extra attention that you have been able to bring to this matter is all around us.

It has been a treat for me to be able to hear both Mrs. Jackson, Mrs. Mondale, and particularly to have the special additional testimony of Glennis, and the record of her history which we all watched on the television dramatization and had the good fortune to hear again today. It certainly gives added impetuous to this very important subject.

I am delighted to be here to testify on behalf of Senator Gary Hart. And he and Lee and I were talking about this as recently as 2 days ago. There was still some thought that he might be able to come; he wanted very much to come himself as he did 2 years ago when he testified before your committee on this very issue.

As a matter of fact, he asked me to do it, and I am delighted to bring you his remarks, which he has made in the context of being a Presidential candidate.

It is very clear that his record in the Senate as well as his record in this campaign has emphasized the fact that there is no more important issue before us than the issue of pay equity, both in the Federal sector of employment as well as in the public and private sector work places throughout the country.

It is interesting that this President of this administration has consistently characterized the record of his administration in terms of what he has done to restore the economy to bolster the American family, and to return to a higher standard of morality. But his words really carry a ring of incredible hypocrisy for about 48 million working women in the United States. Because they know that there is no greater moral issue in this country than the institutionalized wage discrimination against women and minorities.

They know that there is no greater family issue than the poverty that is forced on families headed by women by a sex-segregated system of employment.

And they know that there is no greater economic issue then simple pay equity. And their right to be compensated for their work based on skills, responsibilities, and effort and working conditions rather than on sex or color.

They know that the Reagan record on these issues is one of purposeful failure to lead. Purposeful failure to respond to needs. And purposeful failure to enforce the law.

In the last 30 years a number of women in the labor force has more than doubled. The number of men has increased only a quarter. And, yet, the basic ratio of female-to-male earnings has remained the same.

It is clear that the responsibilities of women have changed drastically. Nearly 75 percent of the women are single, divorced, or living with someone who makes less than $15,000 per year. But though we have assigned more than equal responsibilities to women, we do not pay them wages that are equivalent to those paid to men.

The result is that 49 percent of female-headed households are below the poverty line. And in the last 20 years the number of persons in poor families headed by women of color has increased by more than 50 percent.

I would like for you to notice the chart, which I think portrays very pictorially the statistics that are important to us that have really been stated by so many of the witnesses today.

From 1953 to 1983, the number of women in the labor force has increased. A little over 19 million, it originally was in 1953; and now it is over 48 million. The percentage of women working increased from 34 percent to 53 percent. The percentage of working, married women with children under 6 grew from 15.5 percent to an amazing 50 percent. And the number of households maintained by females increased from 4 million in 1953 to 10 million in 1983.

These statistics represent fundamental changes in both the labor market and in the roles of women in our society. And, yet, during this same 30-year period women's earnings, as a percentage of men's earnings, actually decreased from 63.9 percent to 61 percent.

With this recalcitrant wage gap, it is no surprise that having a job is far less likely to protect a woman than a man from poverty.

Looking at the 1982 Census Bureau figures in the second chart, you can see that 22 percent of households headed by working women, women with jobs, are poor.

And when you look at only the families with children headed by working women, 29 percent are poor. You can compare that to a 6-percent poverty rate overall for families where the head of the household works, but is not a woman.

These figures transfer into a stark reality in which the woman heading a family is nearly six times more likely to be poor than a man.

A black woman heading a family is 10 times more likely to be poor than a white man.

And a Hispanic woman 11 times more likely.

It is important to look at the Reagan administration's response to this kind of progress. The landmark Supreme Court decision in the *Gunther* case opened the book to pay equity through new litigation nearly 3 years ago. But it is a door that has collected cobwebs while standing ajar waiting on an administration unwilling to help working women cross the threshold to nondiscriminatory earnings.

The response of the EEOC to Gunther was what it calls an interim policy to provide their field staff with guidelines on the processing of wage discrimination charges.

Three years later EEOC has yet to promulgate permanent guidelines or a plan for testing the parameters of title VII.

The interim guidelines have been reviewed over and over, but are not being followed by EEOC. And most EEOC field staffers do not even know that they exist.

The EEOC under this administration has not filed a single pay equity legal action under title VII. Only in the last month in response to congressional hearings has the EEOC even begun to consider the pile up of charges that have been filed since the *Gunther* decision.

Even worse, the Justice Department has threatened to roll back gains won by working women through litigation.

Assistant Attorney General for Civil Rights, William Bradford Reynolds, announced opposition to the historic Washington State pay equity decision earlier this year without even reading the transcripts of the case.

As an employer, the Federal Government has taken absolutely no steps to eliminate bias in its pay system, even though the wage gap in the federal sector is a known fact with women earning less than 63 percent of the wages men earn. Men who work for the Federal Government.

In fact, I believe you were part of the committee, Madame Chairperson, which found in examining the relationship between the percentage of men in an occupation in the Federal sector, and the average salary of that occupation each additional percentage point of men in the job category increased the average annual earnings by $176.00.

Furthermore, affirmative action regulations, those that we had under the Office of Federal Contract Compliance program, which prohibit race and sex discrimination by Federal contractors have been eliminated.

Fortunately, the various States of our union are not all controlled by this administration. Seventeen of those States have undertaken job evaluation studies of their civil service systems. More than half of the States have conducted extensive research into the source of wage discrimination. Other States have approached the need for pay equity with creative legislation and policy solutions.

Many, many labor unions are bargaining successfully for pay equity, and are providing the funds and the expertise for more and more legal actions.

It is possible and it is being done, but it is being done without the help of the Federal Government. It is unthinkable, given the need and the demand for pay equity that our Nation's largest employer and the chief enforcer of our laws is providing no leadership on pay equity. Ignoring its statutory obligation to enforce title VII of the Civil Rights Act, and actually engaging in sex-based wage discrimination as an employer.

What has been the response of this administration to the demand for pay equity? It has steadfastly responded that if women want to earn more money, they should enter man-dominated job categories.

The response of Gary Hart, and that of the laws of this land are that working women have the right to compensation free from discrimination in whatever job they hold.

To try to accomplish pay equity through job resegregation would require two out of three people in the country to change jobs. And require women to give up years of seniority and experience, in jobs they may want to work in.

What we should be doing is removing discrimination from all jobs, not generating simplistic rhetoric and ignoring the Constitution of the United States.

Gary Hart would do things differently as President of the United States.

I would like to say that his ideas on the subject of pay equity are not very new, because they are the same ideas that he has been fighting for during his entire time in the Senate. And they are the same ideas that he testified to you before, Congresswoman Oakar, 2 years ago before this committee.

They are ideas that are routed in the straightforward belief that women should be paid equal wages for work of equal or comparable worth.

As President, he will provide the leadership and the muscle, if necessary, to force the Federal Government to fulfill its responsibility to working women.

He will enforce title VII of the Civil Rights Act. And the Executive order prohibiting wage discrimination based on sex. He will appoint to the EEOC, the OFCCP, the Justice Department, the Department of Labor, the Office of Personnel Management, and other responsible Federal agencies, only individuals who are committed to aggressively eliminating wage discrimination, and to the concept of pay equity, which he has outlined.

He will instruct the EEOC to immediately develop and implement a litigation plan for pay equity, and to provide extensive direction and training to the field staff in the processing of wage-discrimination charges. And he will instruct the Attorney General of the United States to fully support any and all litigation in the area of pay equity and wage discrimination. And he will personally dismiss that Attorney General if she or he does not carry out his orders.

As President, he will personally see to it that Federal Government takes a lead and shows leadership as an employer, and by the leadership vested in the President, to evaluate the Federal sector positions, the classification system, and to determine if it contains bias, and to develop a bias-free evaluation system.

He has reviewed the many positive steps that so many State and local governments have been taking. And he has vowed that in each instance that he has studied, there has been an individual who is personally committed to the idea of pay equity, and who has exercised the leadership to accomplish that in that local or State situation.

In Gary Hart you have such an individual. I have known him for a long time, and I am proud of his commitment to the sensitivity and the knowledge that can make this happen. In the Oval Office as he has in his leadership in the Senate, today and tomorrow.

Thank you for letting me bring the testimony for Gary Hart.

Ms. OAKAR. Thank you, Martha. As usual, it is great to have you here in the Halls of Congress. I want to simply thank you for being here. I am not going to ask you questions, because I think you know the issue as well as anyone. I look forward to working with you on this issue and other issues.

Do you have a question, Mr. Bosco?

Mr. BOSCO. Thank you, Madam Chair. And I want to thank former Congresswoman Keyes for her very eloquent testimony.

I have heard President Reagan extol the virtues of American family life many times. But in your testimony and that which preceded it, it appears to me that this is as much a family issue as it is limited to a woman's issue, given that so many women have to work to support their families, and so many women head single-parent homes.

How do you feel that the Reagan administration's reluctance to support comparable pay actually coincides with its beliefs in American family life, or do you believe that it does not?

Ms. KEYES. As a matter of fact, Congressman, I believe that it does not. And I think that as you stated, and as Congresswoman Oakar stated in her initial remarks, this is a family issue. And coupled with the discrimination that we find in the retirement systems for women, it is a family issue and an aging issue. And it is a terrible tragedy, I think, on the quality of life that we should have in this country.

Mr. BOSCO. When men depend upon their wives to bring home part of the bread to support a family, does this not then also become a men's issue?

Ms. KEYES. Very much. It becomes an issue of most of the families in this country, most of whom have two wage earners. And again, it has to be extended to the understanding that two-wage-earner families are also poorly treated by social security and many of our other retirement systems.

So there is again this double burden that are borne by the men in two-wage-earner families as well as the women.

Mr. BOSCO. Thank you very much.

And Madam Chair, I would simply like to say that it is refreshing to hear people who actually believe in something. I am sure that we will be told tomorrow by Phyllis Schlafly and other representatives that probably look at things very much in the same way as the administration does of why we cannot do things.

But it is nice to hear from people who have taken the time and effort to put together facts, and thoughts, and information on how we can do things. And I for one appreciate that very much.

Ms. **Oakar**. Thank you very much. You know, I recall when the Department of Labor put out their statistics a couple of months ago, and said that they had thousands of women who are making more than their husbands. What some of the articles did not say is that the reason they were in a higher wage bracket was because these husbands were unemployed, disabled, and had health problems.

Figures can be somewhat misleading. I recall that the administration was very proud of that figure.

Mr. Hoyer, did you have any questions?

Mr. **Hoyer**. No, Madam Chairman.

Ms. **Oakar**. Thank you again, Martha, for coming.

Ms. **Keyes**. Thank you.

Ms. **Oakar**. Our next witnesses, are Ms. Judy Goldsmith, who is the president of the National Organization for Women; Ms. Mary Futrell, who is president of the National Education Association; and Mr. John Sweeney, who is the president of the Service Employees International Union, AFL-CIO.

The Chair is personally grateful that you thought that the issue was important enough that you as presidents came to these hearings.

Judy, we would like to start with you. We know of NOW's efforts. I recall the 59-cent buttons that we have all worn, and know that that is a focus of your organization.

STATEMENT OF JUDY GOLDSMITH, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN

Ms. **Goldsmith**. Madam Chairwoman, I feel privileged to be here today to have heard the very eloquent testimony on the subject. In particular, I am pleased to have heard the proud and brave story of the women from Willmar, Minn. I know that we are all awed by what they did.

I am very grateful to you for dealing effectively with the critical subject of pay equity for the women of this country.

I am very pleased to have the opportunity to address this committee today about the critical problem of sex-based wage discrimination and the particular solutions offered by H.R. 4599, which will win pay equity for Federal civil service employees.

The National Organization for Women, the Nation's oldest and largest feminist organization with a quarter of a million members, have long been concerned about the economic impact of sex discrimination on women, and the burden of increased cost it imposes on their lives.

NOW supports Representative Oakar's bills, and views the legislation as an important and long overdue step in the eradication of wage discrimination based on sex, race, and ethnicity throughout the Nation's labor force.

As the Nation's largest employer, the Federal Government has a primary obligation to take the lead and set the national standard by eliminating such discriminatory compensation systems.

H.R. 4599 is necessary to protect the rights of this country's approximately 3 million Federal workers, nearly 40 percent of whom are women. The wage gap stands currently at about 60 cents for all women. Women who are civil servants fare only slightly better. They are paid 63 cents for every dollar paid to male Government workers.

Occupational segregation plays a major role in this wage disparity. In 1982, more than 62 percent of all women employed in white-collar Government jobs were in grades 1 through 6, which pay less than $15,000 per year, while less than 20 percent of men held jobs in these lower paying categories.

Sex-based wage discrimination is against the law for both public and private employers, whether an employer provides unequal pay for equal work or unequal pay for different jobs of comparable value.

The 1981 Supreme Court decision in *County of Washington* v. *Gunther* clearly established that such so-called comparable worth or pay equity cases are covered by title VII of the Civil Rights Act of 1964. The Court also refused to review a favorable lower court pay equity decision in *IUE* v. *Westinghouse*, a companion case involving dissimilar male and female jobs which was pending when *Gunther* was decided.

With these two actions, the Supreme Court absolutely established title VII jurisdiction over all pay-equity wage discrimination cases. Yet the Reagan administration has persistently failed to enforce the law; 2 months after the *Gunther* decision, while the Equal Opportunity Commission was still under the management of Carter appointees, guidelines regarding the investigation and litigation of pay-equity cases were issued by the EEOC, the agency which enforces title VII.

However, President Reagan's EEOC Chairman, Clarence Thomas, not only refuses to authorize his staff to enforce these guidelines, he even refuses to acknowledge their existence.

In the process, Thomas has created a backlog of more than 250 cases of wage discrimination based on comparable worth violations. Between 1981 and 1983, Thomas has presided over a 74-percent drop in the number of enforcement cases filed by the EEOC against employers.

Last December in the first significant test case since *Gunther*, U.S. District Court Judge Elmo Tanner ruled in *AFSCME* v. *State of Washington* that Washington State violated title VII by paying workers in predominantly female jobs less than workers in predominantly male jobs.

Judge Tanner based his decision on what he termed overwhelming evidence of "direct, overt, and institutionalized discrimation" in the hiring, pay, and promotions of women employed by the State of Washington.

As with the *Bob Jones University* and *Grove City College* cases, the Reagan administration in the *Washington State* case has once again failed to reinforce a national commitment to fight discrimination against all of our citizens.

Instead, Assistant Attorney General for Civil Rights, William Bradford Reynolds, has gone so far as to say without even having reviewed the trial transcript, that he has absolutely no doubt that Tanner's decision is wrong.

Both the EEOC and the Justice Department are legally bound to enforce the law. Instead, the Reagan Justice Department is threatening to intervene in court on behalf of the discriminator in this case. Such an action would be an unprecedented step backward in public policy, and a total abdication of the Government's responsibility to uphold the laws against discrimination.

In the light of the Reagan administration's recalcitrance to protect the rights of victims of discrimination, the proposed legislation before us is particularly important.

Women and their families cannot afford to have the Federal Government abandon them and their civil rights in these difficult economic times. Women's economic status has already worsened over the past three decades. And as all witnesses this morning have already testified, racial discrimination compounds the economic problems which minority women face.

Of all female workers, 60 percent are now paid less than $15,000 per year, while only 28 percent of men fall into this category. Fewer than 4 percent of all women make more than $30,000 per year, while more than 25 percent of all men are paid that salary. Further, racial discrimination compounds the economic problems which minority women face. In 1982, the wage gap for black and Hispanic women was 55 percent and 51 percent, respectively.

The effects of this wage discrimination on families are devastating; 55 percent of all children under the age of 18 have mothers who work outside the home and many women are the sole support of their families. The percentage of female-headed households has shown a dramatic 70-percent increase during the past decade. Today, 9.5 million families, or 16 percent of the total, are headed by women; these families suffer from a poverty rate more than five times that of husband/wife families.

If current economic trends continue, the National Advisory Council on Economic Opportunity estimates that by the year 2000, this Nation's poverty population will consist entirely of women and children.

The wage gap is a major cause of the continuing feminization of poverty. The single most important reason for the wage gap is the sex discrimination that has resulted from severe and persistent occupational segregation within both private and public sectors. Now, 51 percent of women work in 20 of the 427 Department of Labor job classifications, and 80 percent of women work in occupations which are predominantly female.

A 1981 study, published by the National Research Council of the National Academy of Sciences, shows that the more an occupation is dominated by women, the less it pays. Employers pay the so-called women's jobs less than men's jobs regardless of the skills, education, or training required to perform them.

These occupations are segregated in order to pay women lower wages, and thus increase employer profits. Occupational segregation of women into the lowest paying jobs has actually worsened during the last decade. Not only do women predominate in lower paying fields, but women's gains in higher paying job categories have not been nearly enough to offset that disparity. By 1982, women were 28 percent of executives and managers versus 17 percent in 1970, and 7 percent of all skilled craft workers in 1982 versus 5 percent in 1970. Also, within every job category, an earnings gap exists. Sex discrimination continues to cost women whereever they are in the labor market: female executives and managers are paid 60 percent of the wages paid to their male counterparts, female salespeople 50 percent of men, female clericals 62 percent of men, and female craft workers 65 percent of men.

This situation will change only when there is vigorous enforcement of existing antidiscrimination laws, and when sex is no longer a determinant of wages.

H.R. 4599 mandates the development and use of equitable job-evaluation techniques to eliminate discriminatory wage differentials within the Federal Government's position classification system.

There is nothing new or unusual about job-evaluation techniques. They were invented by management, and most employers use them to compare the internal relationship of different jobs and set wage rates on the basis of skill, effort, responsibility, experience, training, education, and working conditions.

Representative Oakar's bill contains other important provisions to promote pay-equity standards and eliminate discriminatory wage-setting practices within the Federal civil service system. H.R. 4599 requires the Office of Personnel Management to study pay discrimination within the Federal pay structure and report its findings to this committee within 6 months, a positive and necessary first step as long as the personnel who undertake this study are truly committed to the honest evaluation of all jobs. Guidelines and technical assistance to correct pay discrimination found by this study are to be developed, with a maximum 2-year timetable for implementation. Monthly reports during the pay-adjustment process will be required from Federal agencies to guarantee compliance, as well as yearly progress reports from the OPM. These are critical safeguards to insure that the laudable intent of this legislation is carried out, and real equal employment opportunity and fair wages result.

Women Government workers' wages and living standards have been kept intolerably low because of sex discrimination as have wages for all women who work outside of the home. Their talents, skills, and experience remain underutilized at a great cost to our economy and their families.

Representative Oakar's bills present clear methods to insure that the Federal Government obeys the law in compensation of its employees, and we look forward to its rapid passage. By doing so, Congress will send a strong message to Federal regulatory agencies, public and private employers, and to President Reagan that sex discrimination is unjust, illegal, and intolerable to the women of this nation. I thank you.

Ms. OAKAR. Thank you very much, Judy.

Our next witness is Mary Futrell, who is the president of the National Education Association. As a former teacher, I am especially delighted to have you here. I think that we teachers know of the discrimination that exists.

Mary, we are proud of you in your role as president of one of the most important unions in the country. Please proceed in whatever way is the most comfortable to you.

STATEMENT OF MARY HATWOOD FUTRELL, PRESIDENT, NATIONAL EDUCATION ASSOCIATION

Ms. **Futrell**. Thank you very much. Madam Chair, my name is Mary Hatwood Futrell, and I am the president of the 1.7 million member National Education Association which represents teachers, education support personnel, and higher education faculty in all 50 of these United States.

And I would like to say that it is indeed an honor to be here today to testify on this most important issue. And I appreciated the opportunity to hear at least three of the four presidential candidates who had representatives here to speak before the subcommittee on the pay equity issue. I think that it is unfortunate that the fourth candidate is not here to testify here today on the support side.

NEA is pleased to have this opportunity——

Ms. **Oakar**. I want you to know that we invited him.

Ms. **Futrell**. I am sure you did.

NEA is pleased to have this opportunity today to present our views on the Pay Equity Act of 1984, H.R. 5092, and the Federal Employees Pay Equity Act of 1983, H.R. 4599.

Although only a small percentage of the NEA membership is employed in the Federal sector, we believe that these two bills have important implications for our whole membership and for working women everywhere.

The NEA policy on pay equity is clear. The resolution adopted by the 1983 representative assembly is attached. It states in part:

> The National Education Association believes that all workers should be paid on the basis of the requirements, skills, and worth of their jobs, and that factors such as sex or race of the individual performing the job should never play a role in determining salary.

In the past two decades, we have seen women enter the work force as never before. We see them now representative in varying degrees in nearly all sectors and all job categories.

Yet, Madam Chair, despite these many gains, women still earn on the average roughly 60 percent of what men earn. Women are still found predominantly in sex-segregated-low-paying jobs, and we find an increasing number of women and their families living in poverty.

NEA therefore believes that it is imperative that Congress continue to blunt the impact of moves by the administration to renege on the Federal commitment to equality.

You are to be commended for the leadership you have shown in sponsoring these bills, in holding these hearings, and in keeping the issue of wage parity at the forefront of public debate. Those of us in education well understand the need to continue pressing for the close of the wage gap, the most persistent symptom of sexual inequality in our Nation.

Among NEA membership, and let me state that 70 percent of our members are female, are first schoolteachers whose wages are depressed primarily because teaching has evolved as a women's profession. Second, women faculty members facing uphill battles to enter higher paid tenure positions in the colleges and universities. And third, education support personnel who are often stuck in job ghettos, where wage differentials occur more commonly because of differences in job titles rather than any real differences in job responsibilities.

Specifically, teaching is a profession in search of professional pay. At the same time that we are told that education has a high value in our society, we find that the average salary for a teacher in 1982 was $22,019. And I might add that was after 10 years at a master's degree. That is not the average just for teachers.

Even in the large metropolitan areas such as Los Angeles with the Nation's second largest school district, teachers' beginning wages were $13,500 in 1981. This salary qualified a teacher maintaining a family of four for food stamps, a fine commentary on the real value we place on education in the United States of America.

So despite the value we supposedly place on the task performed, there is a gap in the real value the society is willing to pay for it. People who are in lifesaving, life-molding people jobs such as nursing and teaching are repeatedly told through their paychecks that their work is less important than occupations which deal with machines or dollars.

Education support personnel are also not immune from undervaluation. A review of statistics compiled by the Education Research Service, Inc. in its "Wages and Salaries Paid Support Personnel in Public Schools, 1981–82" produces similar conclusions to those uncovered by NEA studies on teachers' wages.

For hourly employees, ERS statistics showed that instructional teacher aides, most of whom are female, earned $4.88 per hour. Cafeteria workers, also a predominantly female classification earned $4.67 an hour.

Meanwhile predominantly male job classes average more with building custodians, not engineers, earning $5.95 an hour, and school bus drivers earning $6.26 an hour.

Nor are the lofty towers immune from earthly problems. Wage inequities persist in the Nation's institutions of higher education as well. Women comprise a little more than a quarter of all faculty in public and private institutions, mostly in the lower paid, lower status positions.

Women college faculty on the whole were paid nearly 20 percent less than their male colleagues in 1981. Men on the average earn $26,000 while women average $21,000.

While we talk about pay equity today, the NEA continues to give full commitment to the positive equal rights amendment which is critical toward redefinition of women's roles through conclusion in the Constitution.

These past 5 years have brought with them a number of advances around the country and the movement for pay equity in the workplace. We have seen a number of labor unions, employee associations, and some enlightened employers bring a greater sense of justice into the workplace through lawsuits, collective bargaining, or management action.

Yet we have seen no leadership to reinforce these actions from the current Reagan administration. In fact, their only actions have been to undo what has been accomplished.

Not only has the Equal Employment Opportunity Commission failed to vigorously pursue wage discrimination cases, the Reagan administration and Justice Department have shown no leadership in the enforcement of the laws against wage discrimination.

Moreoever, the Justice Department has acted in a manner contrary to the public good in the Washington case where it had an opportunity to prove that its negative image on women's issues is due to misinterpretation by the media.

Even a glimpse of current administration policy on important wage discrimination issues only reinforces the need for leadership at the national level, leadership which must come forth from the Congress.

The two bills being considered in this hearing represent a good attempt to help reverse the negligent stand now being taken by the Reagan administration on these matters go vital to our society.

The Pay Equity Act of 1984, H.R. 5092, by reaffirming the Federal Government's responsibility in enforcing present wage discrimination laws represents a way to hold the administration at least minimally accountable on equality in the workplace, and lets the sunshine in on issues which are hidden from public view.

In addition, passage of H.R. 4599, the Federal Employees Pay Equity Act of 1984, could provide a good vehicle to push the current administration to confront the issue of wage discrimination within the Federal sector,

As the bargaining agent for teachers in the Department of Defense overseas schools, we believe that sections 4 and 5 should be amended to show a clear role for the unions in the study phase and agency planning phase.

In conclusion, NEA supports equal pay for work of equal value. We believe that traditional jobs which have been considered women's work like teaching have been undervalued and paid accordingly.

We further believe that title VII of the Civil Rights Act makes pay equity the law of the land. Congressional leadership expressed through bills such as H.R. 4599 and 5092 help all of us by ensuring that a recalcitrant administration moves forward on women's rights.

Thank you very much.

[The statement of Ms. Futrell follows:]

STATEMENT OF MARY HATWOOD FUTRELL, PRESIDENT, NATIONAL EDUCATION ASSOCIATION

Madame Chair:

My name is Mary Hatwood Futrell. I am president of the 1.7 million member National Education Association (NEA), which represents teachers, education support personnel, and higher education faculty in all fifty of these United States.

NEA is pleased to have this opportunity today to present our views on the Pay Equity Act of 1984, H.R. 5092, and the Federal Employees' Pay Equity Act of 1984, H.R. 4599. Although only a minute percentage of the NEA membership is employed in the federal sector, we believe these two bills have important implications for our whole membership and for working women everywhere. The NEA policy on pay equity is clear. The resolution adopted by the 1983 Representative Assembly is attached. It states in part:

> "The National Education Association believes that all workers should be paid on the basis of the requirements, skills, and worth of their jobs and that factors such as the sex or race of the individual performing the job should never play a role in determining salary.
>
> The Association supports all efforts to attain accurate and unbiased forms of job evaluation and to raise the pay of those jobs that are presently undervalued. The "market value" means of establishing pay cannot be the final determinant of pay scales, since it itself too frequently reflects the sex bias in our society."

The federal government has evolved from the New Deal to the present as a vital catalyst in the pursuit of equality for all our citizens. However, since the inception of the Reagan Administration we have seen multiple attempts by the executive branch to break the vital contract between the people and their government-to turn back the clock on many of the gains made during the latter part of this century.

In the past two decades we have seen women enter the workforce as never before we see them now represented to varying degrees in nearly all sectors, and all job categories. Yet, Madame Chair, despite these many gains, women still earn on the average roughly 60 percent of what men earn. Women are still found predominantly in sex segregated, low-paying jobs, and we find an increasing number of women and their families living in poverty. It is imperative for us to move forward--not in reverse as the current Administration would have it--in the fight for equity in salaries, and along with it dignity and justice for all workers in our economy.

NEA therefore believes it imperative that Congress continue to blunt the impact of moves by the Administration to renege on the federal commitment to equality. Madame Chair and Members of the Committee, you are to be commended for the leadership you have shown in sponsoring these bills, in holding these hearings, and in keeping the issue of wage parity at the forefront of public debate.

Wage Disparities Linger in Education

Those of us in education well understand the need to continue pressing for the close of the wage gap, the most persistent symptom of sexual inequality in our nation. Among NEA membership--70 percent of which is female--are school teachers, whose wages are depressed primarily because teaching has evolved as a "women's" profession; women faculty members facing uphill battles to enter higher-paid, tenured positions in the nation's colleges and universities; and education support personnel who are often stuck in job ghettos, where wage differentials occur more commonly because of differences in job titles rather than any real differences in job responsibilities.

Therefore, we know well the meaning of the wage gap which causes the average working woman to earn only 60 percent of what male workers earn. It is this same wage gap which is forcing the increasing number of female-headed households into poverty--and further entrenching the female underclass in our society. The statistics bear this out:

- Three out of five working women earn $10,000 or less a year; one out of three working women earns less than $7,000 a year; this includes 37 percent of white women; 43 percent of black women; and 50 percent of Hispanic women, compared with 12 percent of all fully employed men)
- Median full-time earnings for women with a high school diploma were $12,332 in 1981; men with the same diploma earned $16,200. Only 1 percent of all working women earn over $25,000.
- Single women maintaining families in 1981 had a median income of $10,802; men in the same position had median incomes of $19,771.
- Eight out of ten women workers are working in only 25 of 440 job categories as classified by the Department of Labor. Women are more than 60 percent or more of clerical, sales, health, and service workers; teachers and nurses.

This wage discrimination based on sex and the accompanying undervaluing of the jobs held by women has a profound effect on our whole society. A look at the teaching profession validates this effect.

Teaching: A Profession In Search of 'Professional' Pay

In 1982, a Gallup Poll showed that the public ranked education as its number one priority with regard to federal funding or programs. The public also reaffirmed the view that the quality of teachers is one of the top assets of public schools. In addition, more than half the respondents in the Gallup Poll considered poor pay the leading cause of teacher "burnout"--no surprise to the NEA whose polls show that those leaving teaching for private sector employment report than they earn roughly 25 percent more than they did while in the classroom.

At the same time that we are told that education has a high value in our society, we find the average salary for a teacher in 1982 was $22,019. Even in a large metropolitan area such as Los Angeles--with the nation's second largest school district--teachers' beginning wages were $13,500 in 1981. This salary qualified a teacher maintaining a family of four for food stamps--a fine commentary on the real value we place on education I would say.

So despite the value we supposedly place on the task performed, there is a gap in the real value the society is willing to pay for it. People who are in life-saving, life-molding "people" jobs, such as nursing and teacher, are repeatedly told through their paychecks that their work is less important than occupations which deal with machines or dollars.

Our society must begin to consistently value jobs in terms of their requirements, skills, and responsibilities--not in terms of the gender, race, or physical ability of the person doing it, and clearly, not with excuses that this is "the marketplace" at work. Valuing work on its skill components-the true underpinning of the movement for pay equity--will bring about a lasting change in the way we view and value the contributions of workers in our society.

Education Support: Not Immune from Undervaluation

Across the country, people working in education support positions, in both public school districts and in universities, are facing similar problems to those encountered by personnel in other job classifications.

Unfortunately, most of them have no union to help them resolve these pay inequities.

A review of statistics compiled by the Education Research Service Inc. (ERS), in its "Wages and Salaries Paid Support Personnel in Public Schools, 1981-82," produces similar conclusions to those uncovered by NEA studies on teachers' wages. For hourly employees, ERS statistics showed that instructional teacher aides, most of whom are female, earned $4.88/hour; cafeteria workers, also a predominantly female classification, earned $4.57/hour. Meanwhile, predominantly male job classes average more, with building custodians (not engineers) earning $5.95/hour, and school bus drivers averaging $6.26/hour.

Lofty Towers Not Immune from Earthly Problems

Wage inequities persist in the nation's institutions of higher education as well. Women comprise a little more than a quarter of all faculty, full- and part-time, in public and private institutions, mostly in the lower paid, lower-status positions. Women college faculty on the whole were paid nearly 20 percent less than their male colleagues in 1981. Men on the average earned $26,000 while women averaged $21,000.

Pay Equity and the Equal Rights Amendment

Despite the political climate which brought another defeat for the Equal Rights Amendment (ERA) in a vote on the house floor last fall, the NEA believes that the ERA represents the best hope for resolving the question of the value of work and its relation to gender in our society--the issue of pay equity. Only when women are recognized as full and equal partners under the Constitution will their contributions in the workplace, in the home, and in society at large be properly valued.

This is why the NEA will continue with all its resources and full commitment to work for passage of the ERA.

Pay Equity Fight Must Continue

These past five years have brought with them a number of advances around the country in the movement for pay equity in the workplace. We have seen a number of labor unions, employee associations, and some enlightened employers bring a greater sense of justice into the workplace through law suits, collective bargaining, or management action.

Yet, we have seen no leadership to reinforce these actions from the current Administration. In fact, their only actions have been to undo what has been accomplished. Not only has the Equal Employment Opportunity Commission (EEOC) failed to vigorously pursue wage discrimination cases, the Reagan Administration Justice Department has shown no leadership in the enforcement of the laws against wage discrimination. Moreover, the Justice Department has acted in a manner contrary to the public good in the one case where it had an opportunity to prove that its negative image on women's issues is due to "misinterpretation by the media."

Early this year, without even having entirely reviewed the case brought by the American Federation of State, County, and Municipal Employees (AFSCME) against the State of Washington, Justice Department lawyers decided to enter the case of the side of the employers. They are urging that the finding that women workers for the State had been discriminated against over the years be overturned. The person charged with being the Justice Department's top civil rights enforcer, William Bradford Reynolds, publicly stated in January that although he was still reviewing the case, he had decided definitively that the judge's decision had been wrong.

Congressional Role Key

Even a glimpse at current Administration policy on important wage discrimination issues only reinforces the need for leadership at the national level--leadership which must come forth from the Congress. Education advocates have learned from the battle to retain the strength of Title IX of the Education Amendments of 1972 that a sense of Congress can be vital when an Administration's priority is to move rapidly into the past rather than the future.

The two bills being considered in this hearing represent a good attempt to help reverse the negligent stand now being taken by the Reagan Administration on these matters so vital to our society.

The "Pay Equity Act of 1984", H.R. 5092, by reaffirming the federal government's responsibility in enforcing present wage discrimination laws, represents a way to hold the Administration at least minimally accountable on equality in the workplace-it lets the sunshine in on issues which are hidden from public view.

In addition, passage of H.R. 4599, the "Federal Employees' Pay Equity Act of 1984," could provide a good vehicle to push the current Administration to confront the issue of wage discrimination within the federal sector. As the bargaining agent for teachers in the Department of Defense Overseas Schools we believe that Sections 4 and 5 should be amended to show a clear role for the Union(s) in the study phase and agency planning phase.

NEA supports equal pay for work of equal value. We believe that traditional jobs which have been considered "women's work" have been undervalued and paid accordingly. We further believe that Title VII of the Civil Rights Act makes pay equity the law of the land. Congressional Leadership expressed through bills such as HR 4599 and 5092 help all of us by assuring that a recalcitrant administration moves forward on women's rights.

Thank you.

Ms. OAKAR. Thank you very much, Mary. And we will be having questions for both of you after Mr. Sweeney's testimony. We are very happy to have John Sweeney, who is the president of the Service Employees International Union, AFL-CIO, here as well.

John, you represent a union with a significant number of women. You have been an excellent president. I want to thank you and your staff for the support that they gave our staff in making us understand the plight of the service employee, a field which is dominated by women.

You can present have your statement, in whatever way is most comfortable.

STATEMENT OF JOHN J. SWEENEY, PRESIDENT, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Mr. SWEENEY. Thank you very much, Madam Chairperson. I am delighted to be here. And after that gracious introduction, I think that I will ask you to nominate me at our convention next month.

I am John Sweeney, president of the Service Employees International Union, AFL-CIO. On behalf of the 830,000 members of SEIU, I want to thank Congresswoman Oakar and all of the members of the committee for allowing us to reaffirm SEIU's strong commitment to insuring that this country's low wage and women workers receive equitable pay for the jobs that they perform.

For SEIU pay equity is a critical necessity affecting virtually all of our members. Half of our membership is women working in health care, clerical jobs, building maintenance, and public employment.

Exploitation and discrimination of women in the service industries means depressed wages for all of us in SEIU. When I last testified before you on this issue, women were earning 59 cents for every dollar earned by men. Today that figure has increased to 61 cents, a tiny dent in that giant bulwark of wage discrimination.

And yet I see a promise of more equitable times ahead, because of the progress made through the tremendous leadership of the labor unions on the pay equity issue. Collective bargaining, legislative and political activity, organizing, career development, and education, these are the necessary components of an effective plan to institute pay equity for all workers in the public and private sector.

SEIU has actively utilized all of these approaches as described in our statement for the record. For example, at the collective-bargaining table, SEIU Local 614, the NAPA Association of Public Employees, negotiated a comparable worth committee, and conducted a study without the assistance of a consultant.

The Vacaville School District Board of Education accepted the findings of the report, and agreed to finance $251,000 in equity adjustments for some 200 women workers. These salary increases were separate from the recently negotiated 1984-85 increases of 7 percent.

Yet bargaining is not enough. So SEIU has turned to the statehouses on pay equity issues. Some 12 States have equal pay laws which authorize equal pay for jobs of comparable worth. Seventeen States have completed or are in the process of doing pay equity job evaluation studies thanks to the lobbying on the part of the labor unions.

In Oregon, SEIU's Local 503 representing some 18,000 State workers successfully lobbied the State legislature to pass a bill authorizing a $355,000 reclassification study and establishing a comparable worth task force to undertake that study. A local 503 staff person chairs this committee.

These SEIU Oregon members have a long history of dealing with the pay equity issue. It negotiated a number of equity provisions for its State clerical units including a flat dollar increase which gave the average clerical worker a greater increase than other State workers; a new classification for word processors with a 10-percent increase; and a classification for data entry operators and telephone operators with 5 percent increases.

Ohio Gov. Richard Celeste issued an executive order which requires a pay equity job evaluation study of Ohio's civil service system as a result of lobbying by 9to5, the National Association of Office Workers, who presented him with a 23,000-signature petition; 9to5 has joined with SEIU to form a unique organizing effort, district 925, aimed at offering the benefits of trade unionism to the nearly 20 million unorganized office workers in this country.

In addition to bargaining and legislative activity, organizing women workers continues to be a high priority for our union, and an activity directly related to pay equity since organized women workers earn a full 30 percent more than unorganized women.

In our State and local government contracts, women are earning 71 cents for every dollar earned by a man.

Since our last appearance before you, SEIU has affiliated two large independent associations representing thousands of women workers. The National Association of Government Employees who represent some 80,000 Federal and public service workers. Ms. Cynthia Denton, NAGE's chief counsel, I understand, will be testifying tomorrow, and hopefully will have the opportunity to describe the difficulties and frustrations involved in dealing with the EEOC on sex-based wage discrimination complaints.

Since 1981, NAGE has been trying to resolve a charge of sex discrimination on behalf of 12,000 State clerical workers. NAGE charges that the Commonwealth of Massachusetts since at least 1948 has created and maintained a classification and salary system which has discriminatorily compensated certain positions, because they have become identified as female jobs.

The other new affiliate is the California State Employees Association which represents some 100,000 State workers, and is likewise active in the pay equity movement.

But our efforts cannot flourish and cannot end discrimination without total and dedicated enforcement of the laws enacted to end sex-based wage discrimination. Those of us who care about equity for workers have been appalled by the activities of the Federal agencies entrusted with enforcing antidiscrimination laws.

However, the behavior of the EEOC and other executive agencies is not surprising when one considers the person at the top, and the tone that he sets for workers' issues, women's issues, and civil rights.

However, President Reagan and his appointees might feel, they cannot ignore the law of the land. And title VII of the Civil Rights Act and other laws and court decisions could not be clearer. Basing wages on the sex of the worker is illegal.

The Pay Equity Act of 1984, H.R. 5092, and the Federal Pay Equity Act of 1984, H.R. 4599, require action-oriented reports from Federal agencies that would reaffirm the Federal Government's responsibility to enforce pay equity laws, encourage employers to comply with those laws, and bring Federal wage-setting practices into compliance with existing law.

The educational and informational program for the EEOC called for in the bill will be helpful to workers and to both public and private employers.

We strongly endorse these bills and support the efforts of this committee to make these agencies accountable. Anything short of total dedication on the part of those agencies to the antidiscrimination laws of this country will spell disaster for millions of low-paid and women workers.

The pay equity issue must be addressed on many fronts. We in SEIU look forward to working with you on the pay equity issue, as our union continues to work on other fronts. In organized work places, at the bargaining table, and in the statehouses. And, yes, in coalitions with labor and women's groups.

The battle for pay equity is just one more step in the long history of workers fighting for wage justice.

SEIU will fight the battle through until economic justice is won for all.

Thank you.

[The statement of Mr. Sweeney follows:]

STATEMENT OF JOHN J. SWEENEY, INTERNATIONAL PRESIDENT
SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

I am John J. Sweeney, President of the Service Employees International Union, AFL-CIO.

On behalf of the 830,000 members of SEIU, I want to thank Congresswoman Oakar for inviting us here today to share some recent developments in the struggle for pay equity in which my union is an active force. And I welcome the chance to reaffirm SEIU's commitment to eliminating sex-based wage discrimination and ensuring that this country's women workers receive equitable pay for the jobs they perform.

SEIU had the pleasure of testifying before Congresswoman Oakar and her colleagues, Congresswomen Schroeder and Ferraro, during the congressional hearings on pay equity in September, 1982. Those were historic hearings and marked the beginning of a flurry of activity on the issue in the workplace, in state legislatures and in the media.

We hope today's forum will spur attention and action on the pay equity issue, which we believe is the single most important economic issue for women workers in this country.

When I testified a year and a half ago, I stated that SEIU saw the battle for pay equity as one more step in the long history of workers fighting for wage justice. I am sure, Ms. Oakar, that you remember the giant postcards SEIU sent to members of Congress publicizing those 1982 hearings which featured dramatic pictures of some of those struggles for example--the child labor law, which businesses in Massachusetts denounced in 1924 as "a calamity to our nation."

In 1984, we hear the same indictments of pay equity not just from U.S. business leaders--which we in the labor movement have come to expect--but from officials within our government entrusted with enforcing the laws which prohibit sex-based wage discrimination.

For SEIU, pay equity is a critical necessity affecting virtually all of our members because they work in the service sector, which has long profitted from historic wage discrimination against women. The service industries employ more than four out of every five women employed.

Half of our union membership is women working in healthcare, clerical jobs, building maintenance, and public employment. Exploitation of women means depressed wages for all of us in SEIU, so we are particularly sensitive to distortions perpetrated by both employers and the Reagan administration.

When I last testified before you on this issue, women were earning 59 cents for every $1.00 earned by men working full time, year round jobs. Today, that figure has increased to 61 cents--a tiny dent in that giant bulwark of wage discrimination. SEIU has participated on a number of union-management committees conducting job evaluation studies and we have found over and over again that the jobs held predominately by women are paid substantially less than the jobs held predominately by men. Also, we've found that compensation has nothing to do with the skill, effort, responsibility, or working conditions of the job. The reason for this inequity is simply historic, ingrained sex discrimination.

And yet I see a promise of more equitable times ahead because of the progress made by unions at the bargaining table and in the legislatures on pay equity.

Collective bargaining. Legislative and political activity. Organizing. Career Development and Education. These are the necessary components of an effective plan to institute pay equity for all workers in the public and private sector.

Unions have exercised tremendous leadership on this issue but efforts by unions must be supported by strong laws which are enforced when employers fail to voluntarily comply with the law.

The Service Employees International Union has continued to use a variety of approaches to achieve pay equity.

First, I'd like to address collective bargaining, our most effective and widespread activity. SEIU uses a number of bargaining techniques aimed at closing the wage gap between jobs held predominately by men and jobs held predominately by women.

Specifying a flat dollar increase rather than an across the board percentage increase is one such technique. In preparing for negotiations with the Woodland Hills School District, SEIU Local 585, Pittsburgh, which represents the classified employees, analyzed wages and found great inequities for women employees.

Local 585 negotiated a 75-cent-an-hour raise for each of the first two years, a dollar per-hour wage increase for the third year, and whatever money it takes to bring workers up to scale in the fourth year. For some of the employees, this means a raise of more than $2.00 per hour. The increase brought the most senior women up to the earnings level of the men and equalized the wage rates within each job.

Another technique used successfully by Local 585 was retitling several job classifications to correct inequities--teacher aides became instructional assistants, and library clerks became library assistants--with salaries commensurate with skills.

Carefully conducted job evaluation studies have been a tool in achieving pay equity. SEIU has demanded and won agreement to full union participation in job evaluation studies which have documented wage inequities and led to equity adjustments. SEIU has been careful in requiring that the results of any such studies be the subject of collective bargaining.

Pay equity need not be a controversial issue when employers are willing to accept their social and economic responsibilities.

SEIU Local 614, the NAPA Association of Public Employees, negotiated a comparable worth committee and conducted a study without the assistance of a consultant. The Vacaville School District Board of Education accepted the findings of the report and agreed to finance $251,000 in equity adjustments for some 200 women workers. These salary increases were separate from the recently negotiated 1983-84 increases of 7 percent.

In the City of Berkeley, California, SEIU Local 390/400 recently conducted a pay equity study that led to agreement by the city to $1.1 million in raises over the next two and a half years for 140 clerical workers.

These examples are just a capsule version of our bargaining activity and our bargaining tactics on this issue. SEIU has also demanded and won upgraded entry level wages; the elimination of sex-biased job titles; the elimination of the employer practice of changing wage rate criteria from job to job or expanding job duties without compensation; prohibitions against sex-biased assignment of jobs or arbitrary entry barriers which discriminate against any one class of workers, and the reform of job reclassification procedures.

Education and career development are other activities essential for promoting pay equity.

Our Lifelong Education and Development Program (LEAD) is unique program which sets up career ladders with a combination of on-the-job raining and in-school training for workers. The LEAD program breaks down the barriers which inhibit women's abilities to advance and earn more pay.

Education on the pay equity issue is crucial to its acceptance by our membership and the general public. Without unity in our goals, we cannot achieve pay equity--which is just what employers want. SEIU has undertaken educational sessions aimed at clearing up the misconceptions male workers harbor about the issue and demonstrating that pay equity is simple justice which will benefit all workers.

Yet bargaining and educational activities are often not enough, because employers are all too willing to ignore their social responsiblity and force workers to resort to the courts and outright protest to win their rights.

Thus, SEIU has turned to the statehouses on pay equity issues. Some twelve states have equal pay laws which authorize equal pay for jobs of comparable worth. Seventeen states have completed or are in the process of doing pay equity job evaluation studies thanks to the lobbying on the part of unions.

In the state of Oregon, SEIU's Local 503, the Oregon Public Employees Union, represents 18,000 state workers and has addressed the pay equity issue on two fronts. The union is involved in a coalition active in a discrimination suit against

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the Oregon State System of Higher Education. In this class action suit, the plaintiffs are women professors alleging discrimination in hiring, promotion and pay.

On the other front, Local 503 successfully lobbied the state legislature to pass a bill authorizing a $355,000 reclassification study and establishing a Comparable Worth Task Force to undertake the study. A Local 503 staffperson chairs this committee.

These SEIU Oregon members have a long history of dealing with the pay equity issue. It negotiated a number of equity provisions for its state clerical units, including a flat dollar increase which gave the average clerical worker a greater increase than other state workers; a new classification for word processors with a 10 percent increase; and classifications for data entry operators and telephone operators with 5 percent increases.

Ohio Governor Richard Celeste issued an executive order which requires a pay equity job evaluation study of Ohio's civil service system as a result of lobbying by 9to5, the National Association of Office Workers, who presented him with a 23,000-signature petition. 9to5 has joined with SEIU to form a unique organizing effort, District 925, aimed at offering the benefits of trade unionism to the nearly 20 million unorganized office workers in this country.

SEIU local unions in Minnesota were active in the drive which resulted in the Minnesota State Employees Compensation Statute, a model law with stated definitions of "reasonable relationships" between salaries of different groups.

Clearly, women workers need power and a voice to overcome historical discrimination. More and more, women are turning to unions to organize and work collectively.

Organizing women workers continues to be a high priority for SEIU--and an activity directly related to pay equity since organized women workers earn a full 30 percent more than unorganized women.

In our state and local government contracts, women are earning 71 cents for every dollar earned by a man--still a gap but evidence that unionization is narrowing the gap.

And the federal government must work to narrow the wage gap for federal workers, as a policy matter and as a model employer. Historically, the federal government led the way in the hiring of women, but unfortunately has also led the way in the intentional payment of discriminatory wages. Realizing the example it sets for the rest of the nation, the federal government must provide leadership on this issue.

SEIU firmly believes that unity is strength. A strong organization can bargain better contracts, be a dynamic political force, and better serve the diverse needs of its members. And in every instance, united union action has yielded achievements in pay equity and in eliminating discrimination of any kind in the workplace.

Since our last appearance before you, Ms. Oakar, SEIU has affiliated two large independent associations representing thousands of women workers. The National Association of Government Employees (NAGE) who represent some 80,000 federal and public serviceworkers. Ms. Cynthia Denton, NAGE's Chief Counsel, will testify tomorrow on the actions they have taken to fight for equity for 12,000 state clerical workers in Massachusetts. The other new affiliate is the California State Employees Association (CSEA) which represents some 100,000 state workers and is likewise active in the pay equity movement.

The approaches that SEIU takes to promote pay equity that I have described--collective bargaining, career development and education, legislative and political activty, and organizing--cannot flourish and cannot end discrimination without the cooperation of the government and enforcement of the laws designed to end sex-based wage discrimination.

In my testimony before you in 1982, I said that I hoped those hearings would mark the beginning of Congressional and federal leadership and concern, and the encouragement and enforcement of national laws to assist those fighting to make pay equity a reality for all workers, regardless of race, sex, or national origin.

While there are those in the Congress who take the issue seriously and give it a high priority like you, Ms. Oakar, I cannot say the same for officials in the administration and the agencies charged with the responsibility of enforcing and administering those policies which ensure economic equity and non-discrimination.

Those of us who care about workers have been appalled by the activities of the President, the Justice Department, the EEOC and the U.S. Commission on Civil Rights.

The recent hearings on pay equity before the Subcommittee on Manpower and Housing of the Committee on Government Operations, chaired by Barney Frank, documented the utter disregard of the EEOC and other executive branch agencies for Title VII of the Civil Rights Act and other laws and executive orders which protect the civil rights of working people.

The testimony of the National Committee on Pay Equity February 29 of this year revealed that some 269 cases alleging wage discrimination are currently languishing at the EEOC headquarters.

The EEOC defends its lack of investigation of these cases by claiming it hasn't developed "policy" on comparable worth cases. They have ignored their own 1981 90-day notice policy to provide interim guidance to field officers in processing Title VII and Equal Pay Act claims of sex-based wage discrimination. We find little evidence that the EEOC has taken any positive action since 1981.

Tomorrow, our affiliate NAGE will describe the difficulties and frustrations involved in dealing with the EEOC on sex-based wage discrimination complaints. Since 1981, NAGE has been trying to resolve a charge of sex discrimination on behalf of 12,000 state clerical workers. NAGE charges that the Commonwealth of Massachusetts, since at least 1948, has created and maintained a classification and salary system which has discriminatorily compensated certain positions because they have become identified as "female" jobs.

That wage discrimination is illegal could not be clearer. Title VII of The Civil Rights Act of 1964 prohibits wage discrimination against women. In that law, Congress made it clear that it is illegal for an employer to base wages on the sex of the job holder where job require comparable skill, effort and responsibility. In 1981, The United States Supreme Court upheld the law in its decision, Gunther v. County of Washington.

The behavior of the EEOC, the Justice Department, the Department of Labor and the Office of Personnel Management is not suprising when one considers the person at the top and the tone that he sets for women's issues and civil rights.

However President Reagan and his appointees might feel, they cannot ignore the law of the land. It is thus the responsibility of Congress to provide strict oversight of these agencies to ensure enforcement of these laws in both the private and the federal sector.

The Pay Equity Act of 1984 (HR 5092) and the Federal Pay Equity Act of 1984 (HR 4599) require action-oriented reports from federal agencies that would reaffirm the federal government's responsibility to enforce pay equity laws, encourage employers to comply with those laws, and bring federal wage setting practices into compliance with existing law.

The educational and informational program for the EEOC called for in the bill will be helpful to workers, and to both public and private employers.

We strongly endorse these bills and support the efforts of Congresswoman Oakar and her colleagues to make those agencies accountable. Anything short of total dedication on the part of those agencies to the anti-discrimination laws of this country will spell disaster for millions of low-wage and women workers.

The pay equity issue must be addressed on many fronts. The measures called for to make federal agencies more accountable are much needed steps in that process. SEIU looks forward to working with Congresswoman Oakar on this issue, as our union continues to work on other fronts--in unorganized workplaces, at the bargaining table, in the statehouses and in coalitions with labor and women's groups--to achieve economic justice for all American workers.

Ms. **Oakar**. Thank you, John, for a fine statement.

Judy, you know that many women in this country have been confused at times by the equal rights amendment. Unfortunately some do not realize the impact it would have on the everyday bread-and-butter issues that their lives depend upon.

I am wondering if you can tell us how the equal rights amendment would make a difference in the issues of the wages and equity?

Any of the panel, by the way, can comment on that, if you like.

Ms. **Goldsmith**. I think that one thing we have perhaps not made sufficiently clear, and we will remedy that, to the general public is that, the equal rights amendment is not a piece of legislation. It is a constitutional principle, and that is, of course, one of the reasons why no single or several pieces of legislation can replace it.

That without the equal rights amendment in the Constitution, the Constitution is silent on the question of sex discrimination. So that when the laws that are designed to protect us from discrimination are tested in the courts, and come to be tested against the fundamental law of the land, there is nothing there in which to anchor a strong decision in support of pay equity, for example.

Having the equal rights amendment in the Constitution is going to make the legislation that we currently have stronger and will strengthen the legislation that we manage to pass. But without it, it is possible to have confusion in the courts about, No. 1, what sex discrimination is? And, No. 2, if there is sex discrimination, whether it is legal or not?

If we have the—excuse me, when we have the ERA in the Constitution, that we will have the necessary tool that we need to win economic equity for the women of this country.

Ms. **Oakar**. Mary, do you want to comment on that or can I go on to another question for you?

Ms. **Futrell**. No; you can go ahead.

Ms. **Oakar**. The majority of individuals in the teaching profession happen to be female. And, of course, we want male teachers to be paid fairly as well.

But it is true that, as you mentioned, nearly 70 percent of all the teachers happen to be female. Do you think that because there are more women in the occupation, the occupation pays less?

Ms. **Futrell**. Well, I think that very definitely because it is perceived to be a woman's profession. Many people feel that since it is a woman's job we do not have to pay teachers a salary which is, I would consider, a professional salary.

And, I think that a lot of people view educators, teachers, especially K through 12 as glorified babysitters, and that we are just there to handle the kids during the day. They look upon us as a second income or believe we work because that is something we want to do.

And most people are very surprised when I indicate to them that teachers work only because; one, they have selected it as a profession; and, two, we have to work. It is not a supplementary kind of income for most of us. It is an income that we need in order to survive.

I very definitely think that the fact that teaching evolved into a female profession and that is one of the reasons why the salaries are so low. Many people are not aware of the fact that teaching started out as a profession for men. And as we restructured the profession and moved further and further away from the local school being the hub of the community, and schools became more complex in our structure; then, women began to become the classroom teachers and men began to become the administrators.

And, if you look at the profession today, the areas where we do have relatively high salaries, you will not find women.

If you look at the administrative levels, for instance, you will not find very many women. If you look at the number of superintendents across the country, I think less than 1 percent are female.

If you look at the extracurricular activities where we pay, at least a respectable stipend—I will not say a fair stipend, but a respectable stipend—men are in those positions.

When we look at female coaches, female coaches do not make as much money as male coaches. When we look at females who sponsor activities, we do not make as much money as the men who sponsor those same activities. And in many cases, we do not earn anything for sponsoring activities.

When we look at the high schools, which is where you have your highest concentration of men. They make more money than the elementary teachers, which is where you have your highest concentration of women.

So, I think that the fact that we are perceived to be a female or a woman's profession has a very key role to play in how much money they pay us.

I think, however, that most people are missing the boat because the amount that we pay the individuals in the profession really reflects how we feel about the profession and what we do.

We shape minds. We shape bodies for the future. As a nurse would try to keep someone well for the future; we shape the minds.

Ms. OAKAR. I agree that so few women are in the higher paying positions. It is also true that so few women are in policymaking roles in the educational system. As a former educator I could attest to what you just said. There are very few department chairpeople, very few presidents of colleges, and principals of high schools, who are women.

John, you mentioned a very interesting statistic, which I did not know until your testimony. It appears that when women are unionized they are likely to make more for the services they provide in their profession.

What do we do about the women who do not have your union or AFSCME behind them, who cannot go to court. What are we doing for those women?

Mr. SWEENEY. Well, first of all, we are electing people like yourself to sponsor the legislation and chair this kind of a committee.

But we are finding within our own union, I think, within the labor movement that the greatest organizing success is among women workers, and in industries that have been heavily unorganized.

But we as a union, as do all of the other unions that are involved, believe that in the progress that we are battling for, we are bringing benefit to the unorganized workers as well in various ways. And we are more aggressively organizing workers, but we are also focusing on how through State legislation we can assist those workers who are not organized.

Ms. **Oakar**. Is it fair to say that there are fewer women who are part of the union movement than there are men?

Ms. **Futrell**. Well, for the teaching part of the union movement of the labor movement, the answer would be, no. Because of all the teachers in the United States of America, I believe something like 80 to 85 percent of them are organized and belong to a union. And, NEA, of course, represents about 85 percent of those who are organized. And, as I said, most of the teachers are women.

Ms. **Oakar**. Did you want to respond to that?

Mr. **Sweeney**. No; I would agree with Mary. Only 14 percent of women workers are organized, but that is the fastest growing area of organization.

Ms. **Oakar**. Judy, NOW has been criticized for getting involved in politics. We also know that of all the polls taken since the 1950's, the two issues that women are most concerned about in Presidential politics are peace and economic justice.

How is the feminization of poverty affecting the American politics? Should we make issues that affect our well-being political issues?

Ms. **Goldsmith**. There is a truism that I first became familiar with in the women's movement, but I think it is generally true, and that is that, the personal is political.

And when I am sometimes asked, why the gender gap is—concerns itself primarily with peace and economic issues rather than "Women's Issues," my response is enviably that, economic issues are absolutely women's issues. They are the core of women's issues, and they cannot be separated.

The feminization of poverty is a part of that. It is an appalling phenomenon. It is shocking that in this society, the projections are that if there is no dramatic turnaround, no dramatic change in Federal policy, that by the year 2000 which is now not all that far away, the poverty population of this country will consist entirely of women and their children. That is not healthy for a society.

One of the reasons that it is difficult to make progress on this issue is because the question that is always asked, when we deal with questions of discrimination against women, particularly those that have an economic impact, the question is always asked, "Well, if we correct this discrimination, can we afford to do it?" And the answer has enviably been, "No." Whether we are talking about insurance discrimination or any other kind of sex discrimination with a price tag on it.

If it appears that correcting the inequity is going to cost somebody money, we cannot do it. Never mind that the women of this Nation have been carrying the financial burden of sex discrimination ever since we have had a country.

At the same time, it is utterly repugnant to think that we must balance the economy of this Nation on the backs of women. Yet, it is the reality that we keep coming up against all the time.

And one thing that is changing today, and that is changing in politics is that women are beginning to take a central role, beginning to take some control of their own political and economic destinies and saying, "The unfair burden that women have assumed all of these years is not just, and we are going to do something about it."

And much of what women have been doing, of course, has been translating that determination into power and the voting booth.

Ms. OAKAR. You know we have an administration that has put a multitrillion-dollar price tag on defense over the next few years. I question how we can afford trillions of dollars of weapons that somehow will find their ways into other countries to kill people, but cannot find a way to meet the needs, economic needs of our own people.

Mary, one last quick question for you. You were talking about your attitude toward an administration being an advocate. One would expect that they would be an advocate for the law.

What is your assessment of EEOC's role in enforcing pay equity laws?

Ms. FUTRELL. Failing grade.

You said a quick answer.

Ms. OAKAR. Mr. Bosco.

Mr. BOSCO. Thank you, Madam Chair.

I have been following as best I can the Presidential election, and it seems lately labor unions have been accused of being special interest groups. I know that that is President Reagan's belief, and it appears that it is the belief of one of the candidates who was represented earlier.

Yet, from Mr. Sweeney's testimony as repeated by our chairwoman, it appears that labor unions have at least increased the pay comparability of women by about 11 or 12 percent.

Would you say, Mr. Sweeney, I imagine you are probably the closest we have to one of these special interest labor bosses in front of us, would you say that——

Mr. SWEENEY. We are all special.

Mr. BOSCO. Would you say that labor's interest in this problem is special interest or general interest?

Mr. SWEENEY. Well, I like to think that in the references of labor unions as special interest, if representing workers and championing causes such as we are today, means that we are interested in a special interest; then, I think that it is a great credit to us.

The low-paid workers and women workers deserve a little special attention, and the needs of our times warrant as aggressive a program as we can possibly put forth.

But, I firmly believe that in representing our membership, we are also fighting for those folks who have nobody else to fight for them. And the battle for pay equity is the same battle for the minimum wage or for the public school system or whatever it might have been through the history of the labor movement.

And, I hope that whatever we can achieve that many of the people who have nobody to fight for them are the beneficiaries.

Mr. BOSCO. So you would probably refute those who are saying today that labor is an anachronism and the bosses are all sitting in the back rooms. It appears to me that you are working very hard for issues that apparently are very important to people.

Ms. Futrell, you are, I guess, one of these bosses, too, do you feel the same way?

Ms. **Futrell**. Yes. I have never had anyone to refer to me that way before, but I like to wear that hat.

I think children are special. I have dedicated my life for the goal of trying to help children. And, if the National Education Association is accused of being a special interest group because we want to support candidates who believe in children, and are willing to place themselves on the line to stand up and to speak out to advocate for children; then, I think that that is a very worthy cause, and I am very glad that we are involved in politics, and that we are considered to be a special interest group.

I also believe that teachers are very special. I believe that we have contributed mightily to the greatness of this country.

And as I travel around talking to teachers all over the United States, and I do that all the time, I am very proud of what teachers are trying to do. And, I have no doubt that teachers will continue to do everything they can to make this country great.

In return, we need support. We need support from the local level, the State level, and we certainly need support from Congress and from the White House.

And, so, if people think that we are special, because we say that we need to support candidates who believe in teachers and believe in children; then, I have no problem about that.

I always think it is interesting, though, Mr. Bosco, that people do not talk about the special interest groups which support the current administration. I think that it is very interesting that no one ever talks about the fact that he too seeks out special groups to support him. And, so, if it is not wrong for the goose, it certainly should not be wrong for the gander.

Mr. Bosco. Thank you very much.

Ms. **Oakar**. Thank you.

Mr. Hoyer.

Mr. **Hoyer**. Thank you, Madam Chair.

I would agree with the response of each of our panelists and with the commonality of their interests, which are very special, and ought to be very special to this committee. I applaud the statements.

I do not have a question, but I did want to follow up on Judy Goldsmith's statement.

I think that the economic issue with respect to this particular proposal is outrageous. And, although, no one has mentioned it today, it is the same argument that was heard repeatedly in the 1850's. It was then said that the reason slavery had to be maintained was because the economic system in this country demanded it. It was an outrageous argument then; was rejected through the shedding abroad on both sides. That will not be the case, hopefully and clearly, this time. But it ought to be rejected as emphatically, as strongly and with as much courage as the three of you have shown, as the Willmar Eight showed; and as much as this issue demands.

Mrs. Goldsmith, Mr. Sweeney, and Ms. Futrell are all correct in saying that this is a very, very special interest that we ought to all share.

Thank you, Madam Chair.

Ms. **Oakar**. Well, we want to thank you very much for appearing today, and let us continue in our struggle to achieve economic equity for all people in this country.

Thank you very much.

Ms. **Futrell**. Thank you.

Mr. **Sweeney**. Thank you.

Ms. **Oakar**. The Chair wants to thank those who are waiting. We know that it has been a long day, but we have such excellent witnesses. We value each of you equally.

And our next panel will consist of, Ms. Nancy Reder who is the chair of an organization that has done tremendous work on this issue, the National Committee on Pay Equity, and Dr. Quincalee Brown who is the executive director of an organization that I happen to belong to, the American Association of the University of Women.

We are very happy to have you.

Nancy, if you would like to proceed whatever way is comfortable for you.

STATEMENT OF NANCY REDER, CHAIR, NATIONAL COMMITTEE ON PAY EQUITY

Ms. **Reder**. Thank you, Congresswoman Oakar and members of the subcommittee.

I am Nancy Reder. I am the director of Social Policy for the Legal Women Voters Education Fund, and I chair the National Committee on Pay Equity.

With me today is Claudia Withers, staff attorney at the Women's Legal Defense Fund. Women's Legal Defense Fund also serves on the Board of the National Committee, and it chairs its subcommittee on EEOC enforcement.

The National Committee on Pay Equity is a coalition of over 150 organizations and individuals formed to advocate for pay equity for working women. Our membership includes international unions, major women's and civil rights organizations, legal and professional associations, State and local governments, and individual working men and women. And I might add that most of the organizations testifying before these hearings are members of the National Committee.

Needless to say, as the only national coalition working on the issue of pay equity, we have a particular interest in the subject matter of these hearings. Because the approval process of our coalition, and we are a coalition, is rather a lengthy and cumbersome one, the National Committee has not yet endorsed any of the legislative proposals which are presently pending in Congress. However, we thank you for bringing to national attention this issue, and we welcome the opportunity to share our concerns with you.

We are particularly concerned about the lack of Federal enforcement of the law that is already in existence, something that your legislation is designed to remediate. And our testimony will focus on this particular lack of enforcement.

One of the activities which the National Committee has been involved in has been the monitoring of EEOC enforcement in the area of wage discrimination. We have met with EEOC officials to find out what they are doing in this area. And when information that we asked for was not forthcoming, we had to file a Freedom of Information Act to get that information, some of which we still have not gotten I might add.

Ms. OAKAR. What is it that you have not yet receive? Would you repeat that?

Ms. REDER. Well, we filed a Freedom of Information Act requesting information about the cases that are pending in headquarters that EEOC has not acted on. We asked for specific information regarding those cases, and the type of cases that they were, and we asked for the charges that have been filed, and we have not gotten specifically all the information. We are still working with them and hope to get the rest soon.

Ms. OAKAR. Well, let us hope that they can respond to your wish in a very quick fashion.

Ms. REDER. I think they are having a hard time sorting out the information that they have sitting there. I think that is one of the problems. And that is probably why we have not gotten it.

Many of our members have also filed charges of wage discrimination with EEOC, and they have pending wage discrimination lawsuits. I might add that one of our members tried to file a complaint and walked into the Chicago office and was told that EEOC had no policy on sex-based wage discrimination. And we had to give our member a copy of the 90 day notice that is currently in effect, so that they could then hand it to the staff person there and say, "This is EEOC's policy."

So, I think it is clear that the field does not know about the policy that is supposed to be in effect and being enforced.

The wage gap between women and men is one of the oldest and most persistent symptoms of sexual and inequality of this country, and I will not take the time to repeat the statistics that have already been stated by those people who have testified before me.

However, I would like to cite some of the results of job evaluation studies that have documented wage inequities between female dominated and male dominated jobs.

In the State of Minnesota, which did a job evaluation study, they determined that a registered nurse, which is a female-dominated job and a vocational education teacher, which is a male-dominated job, were evaluated as having the same number of points, 275. However, the male-dominated job was paid a monthly salary of approximately $2,200, while the female-dominated job received a monthly salary of approximately $1,700. And that is roughly a $500 a month discrepancy.

In the State of Washington, a registered nurse, a female-dominated job, received over 300 points compared to a highway engineer, which was a male-dominated job, and yet the highway engineer job paid over $600 a month more.

All the job evaluation studies that have been done to focus on wage inequities continue to point out that there is at least a minimum of 20 percent discrepancy between male-dominated and female-dominated jobs that are evaluated as being comparable.

A legal mechanism for directly challenging this situation does exist. In 1981, the Supreme Court issued its decision in *Gunther* v.

County of Washington. Gunther held that wage discrimination against women who hold jobs which may not be substantially equal to those held by men may be barred by title VII of the Civil Rights Act.

The Supreme Court did not, however, indicate how such cases were to be developed and proved. And the issue is thus ripe for the development of case law, something that we look to the Federal Government—particularly EEOC and the Justice Department—to test the ramifications and the limits of that law, something that they have not done.

The comments that Brad Reynolds, Assistant Attorney General for Civil Rights, has made regarding the Washington State case have already been repeated.

But with respect to EEOC, it has always recognized that wage discrimination is a violation of title VII. It participated as amicus in the *Gunther* case and in a case that was litigated about the same time, *IUE* v. *Westinghouse*. And even before *Gunther*, the EEOC commissioned the landmark study that was done by the National Academy of Sciences and held hearings. Both of these things could provide a sound basis upon which the Commission could rely in investigating charges of wage discrimination that are pending, but the Commission has largely ignored the findings of its own study.

The only positive enforcement action that EEOC has taken is to issue a 90-day notice that was issued in the wake of the *Gunther* decision. Its purpose is to provide interim guidance in processing title VII and Equal Pay Act claims of sex-based wage discrimination.

That notice has been renewed regularly since its original promulgation. In fact, Congressman Barney Frank referred to that as the 900-day notice in the hearings that he held a couple of weeks ago, because it is going on and on without EEOC taking any final action on it.

We do understand that EEOC may adopt a final policy in May.

Under the 90-day notice most charges and accompanying files are to be sent to headquarters before a cause finding is made. And we know this is not happening, and many charges are simply being dismissed for no cause or they are not being investigated.

If the charges are forwarded to headquarters, they are sitting in limbo. There are over 250 cases that are currently being warehoused there.

EEOC persists in defining comparable worth as some strange theory under which most claims that do not involve equal pay for equal work fall. This kind of an analysis ignores the Supreme Court's decision in *Gunther*.

We believe that most wage discrimination cases easily fit within the confines of title VII framework.

And what we can review from the information that EEOC has given to us is that—their litigation of wage discrimination cases since *Gunther* is virtually nonexistent. There is no organized—no considered effort to identify and bring wage discrimination cases. There is no litigation strategy. There is not even a central coordinator who can identify the existing cases.

Based on the above, the national committee believes that EEOC's enforcement efforts can best be described as inconsistent, ineffective and totally lacking in any initiative.

At recent hearings before Congressman Frank, Clarence Thomas, who is the Chair of the EEOC, announced the formation of a study group which will work on a policy for comparable worth cases.

While we are delighted to see that EEOC may be taking some notice of this issue, we are not convinced that they need a new policy to handle these types of cases; that if they simply address them as they do other cases that are pending, we might see some action.

Ms. Oakar. You might want to know that Mr. Thomas came before myself and several other Congresswomen 2 years ago and told us the same thing. He said that EEOC was going to take a bold stand on bringing these cases to some kind of fruition. It has been 2 years and we are still waiting for the results of that momentum.

Ms. Reder. It is like waiting for a godot.

Ms. Oakar. That is right. Theater of the absurd is a good, accurate description of what is occurring.

Ms. Reder. Well, we sincerely hope that the comments that Clarence Thomas made are not cosmetic and that EEOC will begin to investigate the cases that are sitting there.

We feel that if the Commission is truly committed to ending sex-based wage discrimination, then, we should see some positive results soon. And we will be watching and waiting.

[The statement of Ms. Reder follows:]

Statement of Nancy Reder

Thank you, Congresswoman Oakar and members of the Subcommittee. My name is Nancy Reder, and I am Chair of the National Committee on Pay Equity (NCPE). With me is Claudia Withers, Staff Attorney at the Women's Legal Defense Fund, which serves on the Board of the NCPE and chairs its subcommittee on the EEOC.

The National Committee on Pay Equity is a coalition of over 150 organizations and individuals formed to advocate for pay equity for working women. Our membership includes international unions, major women's and civil rights organizations, legal and professional associations, state and local governments, and individual working men and women.

As the only national coalition working on the issue of pay equity, we are particularly interested in the subject of this hearing. While NCPE has not endorsed any of the legislative proposals which are presently pending, we welcome the opportunity to share our concerns with this subcommittee. We are particularly concerned about the lack of federal enforcement of the law already in existence.

One of the many activities in which NCPE has been involved has been the monitoring of EEOC enforcement in the area of wage discrimination. We have met with EEOC officials in order to find out what was being done in this area. When, in the fall of 1983, information we asked for was not forthcoming, we filed a Freedom of Information Act request. We have critiqued the agency's policy documents and submitted testimony at relevant Congessional hearings. We have developed a series of recommendations for the EEOC to use in its enforcement activites relative to wage discrimination. Many of our members have filed charges of wage discrimination with the EEOC and have pending wage discrimination law suits. We, therefore, welcome this opportunity to share our experience concerning the status of the efforts of the federal enforcement agencies, especially of the Equal Employment Opportunity Commission, to enforce the laws that prohibit wage discrimination on the basis of sex, race, color, religion, or national orgin.

THE PROBLEM OF WAGE DISCRIMINATION

The wage gap between women and men is one of he oldest and most persistent symptoms of sexual inequality in this country. Women perform many of the most important jobs in our economy. They teach our children; they are the primary providers of health care in hospitals and nursing homes; they are the mainstay of the financial and business office world. Yet, on the average, women who work full time year round are paid approximately $.61 for every dollar paid to men.[1] The wage gap becomes even wider for women of color, who bear the double burden of discrimination based on sex and race or national origin. Black women earn $.56 for every dollar earned by men, while Hispanic women earn $.52 for every dollar earned by men.[2]

A majority, fifty-two percent, of all employed women work in two of the twelve major occupations: clerical workers and service workers (other than private household workers). In 1982, more than half of all employed women worked in occupations that are 75% female, and 22% of employed women worked in occupations that are more than 95% female. For back women, occupational segregation is even more extreme: the concentration of black women in clerical and service worker occupations is 54%; black women are more likely to be found in service (29.8%) or blue collar jobs (17.2%) than are white women (19.6% and 12.8%); black women are less likely to hold white collar jobs (clerical, sales, professional, managerial) than are white women.

Occupational segregation carries with it the penalty of lower wages. Compare the following predominan'ly male and female jobs:

COMPARISONS OF WORTH AND SALARY OF SELECTED JOBS [1]

Job title	Monthly salary	Number of points [2]
Minnesota:		
Registered nurse (F)	$1,723	275
Vocational education teacher (F)	2,260	275
Health program Rep. (F)	1,590	238
Steam boiler attendant (M)	1,611	156
Data processing coordinator (F)	1,423	199
General repair wurk (M)	1,564	134
San Jose Calif.:		
Librarian I (F)	750	288
Street sweeper operator (M)	758	124
Senior legal secretary (F)	665	226
Senior carpenter (M)	1,040	226
Senior accounting clerk (F)	638	210
Senior painter (M)	1,040	210
Washington:		
Registered nurse (F)	1,368	348
Highway engineer III (M)	1,980	105
Laundry worker (F)	884	105
Truck driver (M)	1,493	97
Secretary (F)	1,122	197
Maintenance carpenter (M)	1,707	197

[1] Hay Associates, "State of Minnesota Report," March 1982; Hay Associates, "City of San Jose: Study of Non-Management Classes," November 14, 1980; "State of Washington Study," Public Personnel Management Journal, Winter 1981/82.

[2] The number of points refers to the jobs' rating in job evaluation studies described in the publications cited in n. 3, supra. Job evaluations generally measure the skill, effort, responsibility, and working conditions in a job.

A legal mechanism for directly challenging this appalling situation does exist. In June 1981, the Supreme Court issued its decision in *Gunther* v. *County of Washington*. *Gunther* holds that wage discrimination against women who hold jobs which may not be substantially equal to those held by men may be barred by Title VII of the Civil Rights Act of 1964. The Supreme Court did not, however, indicate *how* such cases were to be developed and proved. The issue is thus ripe for the development of case law, much as the doctrine of disparate impact was developed when the Supreme Court held in *Griggs* v. *Duke Power* in 1971 that Title VII could be violated by the use of a facially neutral employment test which nonetheless served to exclude blacks from jobs. But neither the EEOC nor the Department of Justice has taken the opportunity. Instead, their efforts have been marked by reluctance at best, and outright hostility to the notion at worst.

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[1] U.S. Bureau of the Census, Current Population Reports.

[2] *Id.* Breakdowns for Asian/Pacific and Native American women are not available, and have not been included for that reason.

THE DEPARTMENT OF JUSTICE

Because of a recent statement made by William Bradford Reynolds, the Assistant Attorney General for Civil Rights, on this topic, we are compelled to address the role of the Department of Justice before turning to the EEOC. The Department of Justice has failed completely to take any steps to enforce the law against wage discrimination. To the contrary, it has acted in a completely irresponsible way in the one case in which it has had any opportunity to act at all. Without completely reviewing the record in the celebrated case of *AFSCME* v. *State of Washington*, Justice Department lawyers have already decided to enter the case on the side of the employer, to urge that the finding that women workers had been discriminated against in wages be overturned.

In a *New York Times* article of January 22, 1984, Mr. Reynolds was quoted as saying that he was still reviewing the case but had concluded that the Justice Department should support the State of Washington in an appeal challenging Judge Tanner's order. Reynolds actually stated that: "I have absolutely no doubt that his [Judge Tanner's] decision is wrong." In a later meeting with NCPE and other pay equity advocates, Mr. Reynolds again acknowledged that he had not completed his review of the case. He refused, however, to disavow the statement made to the *New York Times*.

Mr. Reynolds' actions display a blatant disregard for his obligation as the nation's chief civil rights enforcer to enforce the law. The Supreme Court has already stated in *Gunther* that Title VII can be violated where female jobs are not equal to male jobs. Judge Tanner in *AFSCME* was simply following *Gunther*, as Chair Thomas of the EEOC has already acknowledged. The Department of Justice is again talking about the law as it wishes it to be rather than as it is.

EEOC ACTION

The EEOC has always recognized that wage discrimination is a Title VII violation. Over the past years, the Commission has found liability for wage discrimination on the basis of sex or race in a number of cases. It participated as *amicus* in *Gunther* and *IUE* v. *Westinghouse*,[1] taking the position tha Title VII applies to sex based wage discrimination, and that nothing in its language or legislative history would lead to the conclusion that its protections should be limited only to situations which constitute a violation of the Equal Pay Act.

Even before *Gunther*, the EEOC commissioned a study by the National Academy of Sciences to determine both the manner in which conventional wage setting practices operate to discriminate against women and the feasibility of creating bias free wage setting mechanisms. The results of that study, published in the fall of 1981, shortly after the *Gunther* decision, document the extent of wage disrcimination and provide guidance for evaluating sex bias in job evaluation systems. They could provide a sound basis upon which the Commission could rely in investigating some charges of wage discrimination. To date, however, the Commission has largely ignored the findings of the study.

Similarly, the Commission held a series of hearings on wage discrimination and job segregation in the spring of 1980. These hearings provide a wealth of information for the Commission to utilize in processing individual charges and developing systemic targets for investigation and litigation. Again, however, the Commission has merely published the transcripts of these hearings; it has taken no action to date in the form of issuing findings from the hearings or implementing any new initiatives based on the hearings or the NAS study.

Indeed, the only positive enforcement action which the Commission has taken in the wake of *Gunther* was the issuance, on September 15, 1981, of a 90-day notice to "provide interim guidance in processing Title VII and Equal Pay Act claims of sex-based wage discrimination." That notice has been renewed regularly since its original promulgation, and thus represents the policy to which the EEOC has committed itself with respect to processing wage discrimination claims.

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[1] In *IUE* v. *Westinghouse*, —F. 2d. — 23 EPD Para. 131, 106A (3rd. Cir. 1980), *cert denied*, 101 S. Ct. 563, 26 EPD 9131, 890 (1981), the court found that, even though the job classifications were not substantially equal, females in a predominantly female classification could still compare their wages to wages paid to males in a predominantly male classification. The employer had used a job evaluation system to determine the relative worth of jobs at its facilities. Even though male and female job classifications received the same point-rating, wage rates for predominantly female job classifications were deliberately set lower than wage rates for predominantly male job classifications.

Indeed, even the direction provided on the 90-day notice is not being carried out. According to the notice, charges are to be investigated throughly. Investigators are particularly instructed to seek out evidence concerning:

(1) A breakdown of the employer's work force by sex in terms of job classifications, assignments, and duties;

(2) Written detailed job descriptions and, where appropriate, information gathered from an onsite inspection and interviews in which actual job duties are described;

(3) Wage schedules broken down in terms of sex showing job classifications, assignments, and duties;

(4) Any documents which show the history of the employer's wage schedules such as collective bargaining agreements which were previously in effect;

(5) All employer justification of, or defenses to, the sex based wage disparity;

(6) If a job evaluation system is the basis for the sex based wage disparity, . . . copies of the evaluation and, if available, an analysis of its purpose and operation;

(7) If market wage rate is the basis for the sex based wage disparity, . . . the underlying factors relied upon by the employer and the methods the employer used to determine the market wage rate;

(8) If union collective bargaining agreements are the basis for the sex based wage disparity, . . . copies of those agreements; and

(9) Any evidence which shows that the employer or the employer and the union have established and maintained sex segregated job categories.

Most charges and accompanying files are to be sent to Headquarters before a cause finding is made. Yet, we know that this is not happening in the field. In the field, charges are being dismissed for no cause, or are simply not being investigated. For example, one potential charging party attempted to file a wage discrimination charge in the Chicago district office, only to be told that the office had no policy for handling that kind of case. We provided a copy of the 90-day notice to the individual so that she could show it to the investigator in Chicago.

If charges are forwarded to Headquarters, it appears that no action is taken; they remain in limbo. An August 1982 internal EEOC memorandum listed 234 such charges. The latest internal memorandum lists 272 such charges which are languishing in Headquarters.

The EEOC apparently defends its lack of serious attention to investigating wage discrimination on the ground that it has not developed "policy" on the subject. Indeed, we have seen copies of draft memoranda circulating within the agency which make this argument, and which attempt to create such policy.

These memoranda persist in defining comparable worth as some strange theory under which fall most claims that do not involve equal pay for equal work. Such an analysis ignores the Supreme Court's holding in *Gunther*. Most wage discrimination claims easily fit within the confines of Title VII's framework. Many can be proved under a disparate treatment analysis, in which it may perhaps be shown that an employer intentionally set wage rates lower for female employees. Such evidence of intent may be shown by direct evidence, for example, that an employer *said* that a woman's job classification is paid less than a man's because women "don't support families," or that an employer using a job evaluation system knowingly paid females less even in jobs rated the same as, or more than, male jobs; or it may be inferred from other circumstances of differences in treatment of male and female employees such as occupational segregation by sex. The Commission does not, therefore, need new policy to move forward on these kinds of cases. We submit that, although wage discrimination is a non-CDP issue, the Commission decisions finding liability which already exist and the 90-day notice serve as excellent starting points for investigation and litigation.

The ostensible lack of EEOC policy is merely an excuse for not processing wage discrimination charges. The EEOC has a policy: the 1981 90-day notice. It should use it.

Moreover, not only has the Commission failed to act, but it has allowed the Department of Justice effectively to make policy in the area, by its statements regarding *AFCSME* v. *State of Washington*. This is outrageous. We call on the EEOC to insist that the Department of Justice follow *its* policy, and file an *amicus* brief or intervene on behalf of the plaintiffs in the case.

Given these problems preventing investigation of wage discrimination cases, it is not surprising that the Commission has filed very few, if any, lawsuits involving wage discrimination. (That is, wage discrimination claims that do not involve equal pay for equal work.) According to the information that the NCPE received in settlement of its FOIA request, 37 cases categorized as involving Title VII wage discrimination in some form were pending in litigation as of August, 1982, or were filed after August, 1982.[2] Of these, the Commission was able to find and provide copies of 10 complaints.[3] We have been able to identify only three of these cases that appear to involve more than simply equal pay for equal work.

Of those three, none were filed by the present Administration. Two were filed in 1976 or before, and are primarily challenges to sex-segregated job classifications dating from before enactment of Title VII. The third, filed in 1980, involved a company that paid increased wages for people with military service or college credits—which has a disparate impact on women and minorities. It was recently settled.

It is difficult to evaluate the basis of the complaints because in conformance with notice pleading, their allegations are very general. Moreover, a complaint brought under Title VII alleging wage discrimination is quite likely to involve only equal jobs. Nor do the EEOC designations provided—"W" for wage and "VII" for Title VII—shed any light. The only way to find out what a case is *really* about is to make in-depth inquiries of the attorneys involved.

What we can glean from our review of the information is that the EEOC's litigation of wage discrimination cases since *Gunther* is virtually non-existent. There is no organized, concerted effort to identify and bring wage discrimination cases; there is no litigation strategy; there is not even a central coordinator who can identify the existing cases.

Based on the above, the Committee believes that EEOC's enforcement efforts in the area of wage discrimination can best be described as inconsistent, ineffective, and totally lacking in any initiative. Chairman Thomas testified in the fall of 1982 that he would "look at the issue." We were reassured of this fact in our meeting with him in May of 1983. Commissioner Webb indicated to us that wage discrimination cases would be given priority early this year. Yet, nothing of note has been accomplished.[4]

The National Committee on Pay Equity has devised a number of recommendations to the Commission which, if followed, would ensure that wage discrimination cases would be accorded the importance they deserve. These recommendations have been adopted by our membership, and are being used by them in their conversation and meetings with local EEOC officials. These recommendations are summarized as follows:

(1) The Commission should vigorously enforce its own policy, known as the "90 day notice," adopted on September 15, 1981 (after the Supreme Court decision in *Gunther*) to provide interim guidance to field officers on identifying and processing sex based wage discrimination charges under Title VII and the Equal Pay Act. The policy should be reviewed and clarified periodically in order that wage discrimination charges be investigated fully.

(2) The Commission should give specialized review and processing to wage discrimination charges. This includes but is not limited to:

a. Proper training of field personnel in regional EEOC offices in the identification of wage discrimination charges;

b. Establishing tight timeframes for review and processing of these charges; and

c. Monitoring by the appropriate staff at EEOC headquarters in Washington, D.C. to ensure that time frames are being met.

(3) The Commission should establish a mechanism to ensure that wage discrimination charges received by field offices are referred to EEOC headquarters, as dictated by the notice, so that proper monitoring can take place. Field offices should be assessed on the basis of numbers of wage discrimination charges which are processed.

(4) The Commission should provide, on a quarterly basis, information to the National Committee on Pay Equity regarding wage discrimination charges and cases. This should include number of charges, field regions in which they are filed and names of cases that the EEOC has decided to pursue. In addition, the EEOC should provide the National Committee with information on Equal Pay Act charges and cases.

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[2] The list also includes a few cases that have recently been authorized for litigation but have not yet been filed in court.

[3] The complete list that the EEOC provided included 58 cases, 21 of which included only Equal Pay Act allegations. The Commission provided a total of 23 complaints, but our review revealed that most (13) of them involved classic Equal Pay Act cases.

[4] The Commission recently approved a change in the focus of the administrative charge processing system. As we understand it, the emphasis is to shift from rapid charge processing to a more extended investigation of charges filed. Such an approach, if properly handled, might help the Commission find out about its wage discrimination charges.

(5) The Commission should establish an EEOC Headquarters Task Force whose functions include:

a. Targeting of wage discrimination cases as part of the early litigation program and as part of the systemic program so that all appropriate litigation avenues are pursued in a timely way;

b. Coordination with the EEOC's National Litigation Plan so that wage discrimination will become a litigation priority for the Commission; and

c. Designation of an individual or individuals in EEOC Headquarters who would be responsible for review of all wage discrimination cases.

Adoption of these recommendations would provide the impetus for the development of a cohensive approach to wage discrimination charges. It would put the EEOC where it should be on this issue—at the forefront. But the EEOC has failed to adopt them.

There are no more excuses to be made: the law is in place and the cases are available for investigation and litigation. All that remains is that the EEOC act.

Ms. OAKAR. Dr. Brown, would you like to proceed, please.

STATEMENT OF MS. QUINCALEE BROWN, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

Ms. BROWN. My name is Quincalee Brown, executive director of the American Association of University Women, the oldest and largest national organization for the educational advancement of women. We have 195,000 members in every congressional district who applaud Ms. Oakar and members of the subcommittee for their concern about this vital issue.

When AAUW was founded in 1881 its leaders believed that by giving women access to equal education, they would also be gaining equal footing in the marketplace.

It is tragic to note that in spite of all of our progress in getting women into colleges, professional and graduate schools, women on the average still earn only 61 percent of every dollar a man earns.

Even more discouraging is that despite all the laws, some of which are 20 years old, discriminatory wages are common in both the public and private sector. Even though there have been dramatic changes in the last 15 years, women are still clustered in a handul of jobs. Some 49 percent of all employed females working in just two categories: clerical work and commercial cleaning.

Considering all the testimony that has preceded me, I think I would like to take a slightly different tact and describe to you a couple of cases in which I have been involved that deal with comparable worth.

In 1974 when I was a Federal Women's Program Manager at the U.S. Government Printing Office, I became involved with the infamous *Bindery Workers* case. The case of women who sewed books together; being paid far less than men who glued books together.

I dare say that there are any number of people in this room who have had experience both in sewing and gluing, and could attest to the fact that sewing requires every bit and perhaps even greater skill than does gluing.

It took about 8 years for that case to be first settled in court. And the Bindery Workers won the case. However, I do believe that there has yet not been a settlement in that the case is still on appeal.

The second time I was involved——

Ms. OAKAR. Well, Dr. Devine is waiting anxiously to testify. Maybe we can ask him his feelings on gluing versus sewing.

Ms. **Brown**. Fine. I would look forward to that.

The second case that I was involved in was in about 1977 when I was the executive director of the Montgomery County, Md., Commission for Women.

While much of the literature on comparable worth discusses the fact that an enlightened county like Montgomery County discovered that their liquor store clerks were being paid more than their beginning school teachers, there were no administrative remedies, since they both worked for different administrative bodies. However, when it was discovered that the liquor store clerks were earning more than the library clerks, there were administrative remedies that we could pursue.

The liquor store clerks were four grades higher and earned on the average of $3,000 to $4,000 a year more than did the library clerks.

Now, the liquor store clerks were required to have a high school diploma. They stocked the shelves; waited on customers at the checkout stand; assisted customers in the store and handled money.

The library clerks on the other hand were required to have a college degree. They stocked the books on the shelves in the correct Dewey Decimal System order; waited on patrons in the library; worked at the checkout desk; assisted customers and handled money.

The county government in all its wisdom ruled that the jobs were certainly not comparable because liquor store clerks had to lift heavy boxes. And carrying stacks of books was simply not the same, somehow, as lifting boxes of liquor.

It was this kind of decision that led Judy Mann to write in one of her articles that jobs requiring strength and endurance were given more value than jobs requiring tact and patience.

While these cases had personal involvements of mine, certainly AAUW is also most concerned about unequal pay that still exists in the academic world.

In the early 1960's when I was a director of debate at a large Midwestern State university, I accepted the fact that I was paid less than my assistant debate coach, because after all he had two children to support and I was single.

And while I cringe today at either my naivete or stupidity, I am not sure which, I am disturbed that even with equal education and equal experience, academic women are paid, on the average, only 79 cents for every dollar a man earns.

Correcting such inequities has been even less successful on college campuses because of the nature of the tenure system and the barriers that exist to hiring and promoting faculty women.

AAUW supports the Pay Equity Act of 1984, which encourages pay equity in the private sector and reenforces the Federal Government's responsibility to protect employees in this Nation from illegal pay discrimination.

And we also support the Federal Employees Pay Equity Act of 1984.

In particular we endorse the study outlined in section IV of the act which mandates the Federal Office of Personnel Management to conduct a study on discriminatory wage practices and variance in position classifications.

We also applaud the efforts contained in the legislation to submit a detailed report to the Congress on steps being taken in the Federal Government to eliminate pay discrimination.

We are also pleased that the Pay Equity Act of 1984 outlines specific activities of the EEOC, to develop ongoing educational programs and conduct research on various equable wage setting techniques, those techniques being most important and to the future of comparable worth, and develop a plan to provide technical assistance to employers who request it.

The enforcement provisions of the act are essential if women are going to gain economic equity. Laws that are not enforced and Executive orders that go unnoticed can only perpetuate injustice. If it takes a legislative guarantee of enforcement; then, AAUW fully lends its support to the vigorous and timely application of the act.

Women workers, as we have heard, perform most and many of the most important jobs in our economy. They are the teachers of our Nations children. They are primary providers of health care. They are the backbone of any office.

It is time for Congress to recognize that the contribution women make to the economy requires nondiscriminatory pay scales.

Women work for economic needs; not for the luxury and fun of the job. Ending discrimination in the pay scales of American workers marks a first step to the recognition that women are truly equal partners in the economic security of our Nation.

Thank you.

Ms. **Oakar**. Thank you, Dr. Brown, for your exquisite examples.

It is interesting when you talk about university women versus university men. The Chair's own experience comes into play. I was so glad to get a job at a university in those days. But, when I got it, I was placed at a lower step. Whoever hires has the option of placing you.

What has happened historically is that females are placed in a lower step to begin with, even if they have the exact same experience, the exact qualifications, and education.

It is really a lesson in manipulation, when you look at examples like that; even in what somebody would consider a more sophisticated field. That it is just as true for a college professor who is female, than someone who sews books together.

Nancy, can you tell me how many cases are backlogged at the EEOC?

Ms. **Reder**. Well, I think I am going to let Claudia answer the question on the exact number.

Ms. **Oakar**. Claudia, would you identify yourself, please, for the record.

Ms. **Withers**. Yes. I am Claudia Withers; I am a staff attorney at the Women's Legal Defense Fund.

Our information tells us that there are about 272 charges that we know of that are backlogged in headquarters of the EEOC. We do not know how many others might be somewhere in the regional offices.

Ms. **Oakar**. But that is just the headquarters?

Ms. **Withers**. Yes, ma'am.

Ms. **Oakar**. I know of some cases in the Chicago area where women have been told, "Well, we are so busy, we just cannot get to yours." Women wait months and months. This is true all over the country.

So, you are talking about the national headquarters.

Ms. WITHERS. Yes, that is what we are talking about.

As Nancy mentioned earlier, a lot of people that are coming in with wage discrimination charges may well are being told that there is no policy. And, so, there may be countless other possible cases that we are not aware of. They just are not being handled——

Ms. OAKAR. You mean, workers that work for the office are saying, there is no policy even though the law is clear?

Ms. WITHERS. Well, that is the experience that we have heard of, especially in the Chicago example that Nancy gave.

Ms. OAKAR. In the Chicago area. I see.

Ms. REDER. We do not know how many of the people who come in and file a charge of discrimination, and either little or no investigation is done, and then the charge is simply dismissed. And there may be a number of those cases. We do not know how many of them there are.

Ms. OAKAR. Are you saying that the expeditious way to deal with the cases that are backlogged is just dismiss them?

Ms. REDER. Well, of course, that is one thing that can be done. It is my understanding that the workers in the field offices for EEOC are required to handle a certain number of cases. I think that is the new policy that has been introduced, to speed things up.

And that one way of handling those cases is to do as quick an investigation as possible, and either dismiss them as, you know, no cause, which is what you do when you find no cause of complaint.

Ms. OAKAR. You have mentioned in your testimony, if I am not mistaken, that there was no litigation strategy and no plan of action as advocates for the law.

Have you asked them in writing to give you some strategy?

Ms. REDER. The National Committee on Pay Equity developed a list of recommendations for action by EEOC which we presented to Clarence Thomas almost a year ago at a meeting. That list of recommendations is included in the written testimony that we put into the record. And we asked—those recommendations include—let's see if I can sort of summarize them for you.

Vigorous enforcement of the 90 day notice policy in that the Commission should give specialized review in processing to wage discrimination charges, including the proper training of field personnel, establishing tight timeframes for review and processing of charges, and monitoring by appropriate staff at EEOC headquarters in Washington, D.C., to insure that timeframes are being met.

We met with William Webb, one of the Commissioners several months ago, and he talked about EEOC developing a policy for how to handle these types of cases. I think that is what you referred to that Clarence Thomas testified before your subcommittee a couple of years ago.

And we questioned why they needed a new policy of law. I mean, the recommendations that we have outlined are recommendations in terms of handling these charges that are already pending, and any others that may come forth. And it would certainly help the agency in terms of identifying these kinds of cases, because I think that is what's so important is that first they be identified; and, second, that they be handled in an expeditious and appropriate manner. And that is just not being done.

Ms. **Oakar**. Dr. Brown, we know the economic problems that women have when they are not paid justly. And we know the end result is that when they get older they become the poorest people in the country.

Tell me about the morale that women feel when they know that another professor, for example, is paying more than theirs.

Ms. **Brown**. I think it's been our rather close association with some of these women in colleges and universities who have in some cases filed or who have even gone to court, that led AUVW to create their legal advocacy fund. We've been supporting several cases; one is the *Cornell Eleven* case which has gained some national prominence as the case of women at Cornell who filed against the university on tenure end pay equity.

There are some absolutely outstanding examples. For example, the only woman in the United States who has ever coauthored a book with a Soviet scientist who is an internationally recognized authority in the field of Soviet-American relations was turned down for tenure in her department, because her work wasn't adequate even though she had outpublished and outstudied most of the men in the department.

Instead, the position was given to a friend of the president of the university who had been fired at Brown and was not granted tenure there and who had not yet finished his doctor's degree. So those were the kinds of inequities experienced by just 1 woman out of the 11 that filed against Cornell.

Ms. **Oakar**. The Chair personally knows of the case at Notre Dame University where so many women sued the university because they weren't granted tenure. They felt their qualifications were equally as good if not better than the men who got tenure. That was a classic example of discrimination.

Ms. **Brown**. Well, right now there's a case being tried in court that we ought to keep our eye on and that is the *Penk* case in Oregon. It may be one of the best cases that will come out over these few years. It's a case where the entire State university system is being sued by the female faculty of the State university. One of the things that's interesting is that the State has now spent probably $3 million in defending their position. It seems a shame, they could probably have granted the back-pay and promotions and tenures that are owed to the women for the amount of money that they are spending in hiring attorneys. The case will probably be tried for almost 6 months.

Mary Gray who is the president of WEAL and a statistician, whom you probably have met, is flying back and forth from Washington testifying extensively on the *Penk* case and thinks that it's probably one of the best ones.

There's no question, Congresswoman Oakar, that the morale factor is tremendous. The other thing that you realized—you know your lead-in was—women as they are older end up in poverty as the amount of money that you earn as salary throughout your career determines your retirement. And if you start off several steps less than another person who has even equal or sometimes less credentials, you never make that up throughout an entire lifetime. And so it's a very cumulative kind of thing. Once you realize it's happening to you, the morale factor is devastating. Not only the fact that you may find yourself at midlife or midcareer being denied access to the tenure that you need or to the promotions that you need, to even survive in an academic world.

It's a very serious problem.

Ms. **Oakar**. When you add to the fact that for most women social security and pension coverage are inadequate, the issue becomes much larger.

We're really dealing with an issue that relates to one's survival, particularly when one gets older. And this is why I think it's so important.

I want to thank all three of you for being here. We're very, very greateful for the work that you're doing.

Ms. **Brown**. Thank you very much.

Ms. **Oakar**. Our next witness is the Honorable Dr. Donald J. Devine, who's the Director of the U.S. Office of Personnel Management. Dr. Devine, thank you for your patience. We're sorry that it's taking so long to get to you. but, we know that the testimony's been instructive. We've given you a major role to play in our legislation. We're pleased that you're here to testify about the subject of pay equity. Please proceed, Doctor, in any way that's most comfortable for you.

Thank you very much.

STATEMENT OF DR. DONALD J. DEVINE, DIRECTOR OF U.S. OFFICE OF PERSONNEL MANAGEMENT

Dr. **Devine**. Thank you very much for having me; it's a pleasure to be here before the committee today and to talk about the Pay Equity Act and to be before this committee again on this subject as we were a year ago or so.

First thing I'd like to make abundantly clear is that this administration is fully committed to equal pay for equal work. I'd like to point out that the statutes controlling pay already require, in the Federal Government, equal pay for substantially equal work.

The system for evaluating positions in the Federal service, which I will describe in some detail, is designed to insure that the principles set forth by the Congress in law are carried out. About 1,600 OPM employees work in our staffing group which performs recruiting, examining, and job standards functions, and makes up more than 25 percent of OPM's total employment.

The major assumption of H.R. 4599 is that salary discrimination is prevalent in the Federal Government wage system. If this is true, the present system is already at variance with the law.

I believe it would be useful to first outline the legal principles under which the Federal system works.

Section 2301 of title 5 of the United States Code establishes the merit system principles; particularly pertinent are merit principle No. 2 which requires fair and equitable treatment of all employees and applicants, and principle No. 3 which states that—

> Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and

appropriate incentives and recognition should be provided for excellence in performance.

Section 5101 states that—

> It is the purpose of this chapter to provide a plan for classification of positions whereby (1) in determining the rate of basic pay which an employee will receive, (a) the principle of equal pay for substantially equal work will be followed; and (b) variations in rates of basic pay paid to different employees will be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed and to the contributions of employees to efficiency and economy in the service; and (2) individual positions will, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades as defined by section 5102 of this title and the various classes will be so described in published standards, as provided by section 5105 of this title, that the resulting position-classification system can be used in all phases of personnel administration.

Section 5105 states that—

> The Office of Personnel Management, after consulting the agencies, shall prepare standards for placing positions in their proper classes and grades. The Office may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it considers necessary for this purpose. The agencies, on request of the Office, shall furnish information. The Office shall (1) define the various classes of positions in terms of duties, responsibilities, and qualification requirements; (2) establish the official class titles; and (3) set forth the grades in which the classes have been placed by the Office.

Section 5104 defines in general terms the level of duties and responsibilities for each general schedule grade 1 through 18. The general schedule includes about 1.4 million employees. General schedule positions are located in almost all Federal agencies and include a great diversity of occupations ranging from messengers and clerks to highly skilled professionals in such fields as economics, law, accounting, the social, medical, biological, and physical sciences, engineering, education, management, and administration.

The prime methodology used to evaluate general schedule positions is called the Factor Evaluation System for nonsupervisory positions in the GS-1 through GS-15 range. The factor evaluation system (FES) was developed in the 1970's and implemented in 1975 in response to the Job Evaluation Policy Act of 1970, which identified a number of concerns related to equity and consistency in the evaluation of Federal positions.

The FES has nine factor and from three to nine levels defined for each factor. These factors, along with the number of factor levels and point ranges, are:

Factor 1, knowledge required for the position, is the most important single factor; it has 9 levels and ranges between 50 and 1,850 points.

Factor 2, supervisory controls, has 5 levels ranging from 25 to 650 points.

Factor 3, guidelines, has 5 levels from 25 to 650 points.

Factor 4, complexity, has 6 levels from 25 to 450 points.

Factor 5, scope and effect of the job, has 6 levels ranging from 25 to 450 points.

Factor 6, personal contacts, 4 levels ranging from 10 to 110 points.

Factor 7, purpose of contacts, 4 levels, ranging from 20 to 220 points.

Factor 8, physical demands, 3 levels, ranging from 5 to 50 points.

And factor 9, work environment, 3 levels, ranging from 5 to 50 points.

In utilizing the factor evaluation system, positions are point-rated, factor level by factor level, and the following point ranges are used to convert a position's total point score to a GS grade. The ranges are listed in the written testimony, but they go from GS-1, with a range of 190 to 250 points, through to GS-15, with 4,055 to 4,480 points, the maximum under the factor evaluation system designed for work of that complexity.

Ms. OAKAR. Doctor, do you think the ratings are fair?

Dr. DEVINE. Fair in what sense?

Ms. OAKAR. In terms of the amount of points you give for certain types of professions?

Dr. DEVINE. Well, I'm not here to defend the system; this system is——

Ms. OAKAR. I'm not blaming you for the system, either, believe it or not. White collar women, for example, on the average make about $17,000 versus $27,830 for men. Are the points given for certain professions allocated fairly, or should some professions get more than they already get? That's the issue. Why is there a $10,000 discrepancy between the average male and female Federal employee.

Dr. DEVINE. I would say the main reason is seniority. We have a system that's grown up over about 100 years in which seniority is built into the major foundations of the system. The median seniority level, for example, for women in the government, is about 3.2 years; for men, it's about 6.6 years, about twice as high. That's one of the reasons that we've been trying to make performance more important in the personnel system because women do much better under performance than seniority criteria.

Ms. OAKAR. Well, if I use your example of an average woman's in for 3 years and the average man's in for 6 years, do you think that the job, the differentiation, should be $10,000 more for that person?

Dr. DEVINE. No; I think pay should be based on performance, and if it were, the differential would be much, much less.

Ms. OAKAR. Well, I'll be asking you some questions about where the high points are in the Federal civil service system, but please continue.

Dr. DEVINE. Thank you. Each of the 45 factor levels in this 9-factor system is defined in a primary standard by a short paragraph, and it was that primary standard that was forwarded to Congress as a consequence of the job evaluation policy. Since the Federal Government, however, operates a highly decentralized classification system, a generally written primary standard factor level definition has not in the past been deemed to be specific enough to ensure uniform grading by the approximately 2,000 position classification specialists worldwide, who utilize the system to evaluate the 1.4 million positions in the hundreds of organizational locations. Thus, the U.S. Office of Personnel Management interprets the primary standard factor levels by describing them in specific occupational terms.

These descriptions, along with other guidance, are found in individually published classification standards. Occupational classification standards also include benchmark position descriptions.

Benchmark position descriptions are position descriptions which are officially classified by the Office of Personnel Management. Each benchmark contains a summary duty statement and further interpretation of each of the FES factors, written in terms of positions which are found in significant numbers in the occupation.

Thus, while OPM occupationally interprets the position classification statute and the FES primary standard through the development and issuance of standards, agencies evaluate their positions by applying the classification standards.

As you can see, the existing system is that summarized in section 3(4) of H.R. 4599, including the guarantee of equal pay for substantially equal work. All of the parts of the Federal system—the statute, the primary standard, occupational factor level descriptions, occupational benchmarks—comprise an interlocking job evaluation system.

The focal point of that system is classification standards. Standards contain the highly specific measures agencies need to grade their positions. Included are occupationally based factor level descriptions which interpret the primary standard's factor levels, benchmarks covering from 3 to 20 positions depending on the occupation's complexity and diversity, and a host of other guidance materials.

In the course of an occupational study, the occupational specialist develops extensive and detailed information regarding the work of the occupation, how it is done, the levels of work, the knowledge, skills and ability required to do the work at each level and specialization, and the relationship of the work to other occupations. These facts and judgments are obtained from key management officials and supervisors, employees at various levels of the occupation, personnel officials and specialists, professional and technical societies, unions and other organized groups, representatives of the academic community, industry, and others.

This body of information forms the basis for a draft classification and qualification standard which describes the levels of difficulty and responsibility, identifies those levels with grade levels, describes the knowledges, skills and abilities required to enter the occupation, and identifies the kinds and levels of education, experience, and training which provide the required knowledges, skills and abilities.

Draft standards are issued for review and comment by agencies, unions, and other interested parties. This critical review of draft standards is a vital part of the process. The comments received are carefully reviewed and appropriate corrections or clarifications are made so that the final standards issued are accurate and can be applied consistently. The management of each agency then applies these standards in classifying jobs within that agency.

H.R. 4599 proposes that OPM establish an equitable job evaluation technique. The bill defines a job evaluation technique as "an objective method of determining the comparative value of different jobs utilizing a system which rates numerically the basic features and requirements of a particular job, including such factors as education, training, skills, experience, effort, responsibility and working conditions." The bill further defines an equitable job evaluation technique as a "job evaluation technique which, to the maximum

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extent possible, does not include components for determining the comparative value of a job that reflect the sex, race, or ethnicity of the employee." The factor evaluation system now working in the Government is such a system. It seems to me that this legislation proposes the establishment of that which already is in place. Both H.R. 4599 and 5092 propose to mandate a study of the Federal job evaluation system. You will be pleased to know that a legislatively mandated study is not necessary.

I have already directed my staff to conduct a thorough review of the entire standards process. Included in the review is the following: We are examining first how closely our system follows civil service law, particularly whether we follow merit principle 3. Second, we are studying whether any form of discrimination exists in our classification system. We recognize that the elimination of any discrimination is an important and desirable goal. Third, we are examining the judgmental aspects of job evaluation to determine if the subjectivity of our system can be reduced in any way. We want to ensure that we operate a system which is neither arbitrary nor biased. Fourth, we're exploring what unnecessary restrictions may exist on entry to Federal jobs, such as excessive credentialing. Finally, we're comparing the virtues and problems of the Federal wage system with those of the general schedule and we are examining the rationale for maintaining these distinct systems.

There has been a good deal of public discussion of comparable worth as a mechanism for giving special attention to recognizing the worth of jobs, especially those predominantly populated by women. Much of the discussion has concentrated on documenting the pay relationships by sex among jobs, and perceived pay differences. But there is little information on how to get from the problem to the solution.

The Equal Employment Opportunity Commission, in 1978, commissioned the National Academy of Sciences to examine the issues involved in the comparable worth concept of compensation. The NAS report, "Women, Work, and Wages: Equal Pay for Jobs of Equal Value," was issued in 1981. Although the NAS final report did not definitively describe what might constitute a fair and equitable job evaluation plan, it did suggest some characteristics which the NAS committee believed to be prerequisite for a comparable worth job evaluation system.

These are first, consistent treatment of jobs within a comprehensive evaluation plan; second, explicit evaluation criteria; and third, an emphasis on internal equity among jobs.

There are the same characteristics present in the current Federal job evaluation system. For example, as regards consistent treatment of jobs, grades for all general schedule positions are determined by agency personnel using the position classification standards developed and issued by OPM.

As I indicated earlier, OPM classification standards interpret the grade value guidance provided in section 5104 of title 5. So the same scale of values is used for all positions from GS-1 through GS-15, regardless of type or level of position. In addition, by applying each of the 9 common factors consistently, the factor evaluation system further insures that all positions are fully evaluated within a common framework.

As regards availability of explicit evaluation criteria, many of our position classification standards run upwards of 100 pages in length. There are about 300 occupational standards for the approximately 425 GS occupations. Those occupations without specific standards, most of which have relatively few employees, are evaluated by cross-referencing to related occupations. Of course, there is easy access to published standards through the Government Printing Office, agency personnel offices, and many public and university libraries.

Each classification standard provides a good deal of information about its occupational coverage so that positions will be classified to the correct series, and specific grade level criteria. FES benchmarks, in addition, describe work situations which typically represent significant numbers of positions.

The third characteristic mentioned in the NAS report, emphasis on internal equity, can be traced back to the 1923 Classification Act. In that act, grades were first established and defined in terms of the level of difficulty, responsibility, and qualifications required. These grades were thought to be so central to the system that they and their short definitions were established in law.

All of the Government's various white-collar jobs were then analyzed and evaluated in terms of those measures and placed or classified into grades. Only then was pay attached to the grade, yielding a pay rate for an employee in a job classified to that grade. Thus, diverse jobs, in diverse occupations, in diverse agencies found their way into the same single grade, whose incumbents were then paid the same.

Although the 1923 Classification Act established only 5 different job evaluation or pay services, those 5 services were conceptually interrelated. Those services were professional and scientific; clerical, administrative and fiscal; subprofessional; custodial; and clerical mechanical.

By 1949, only the first 3 services were in extensive use for white-collar jobs. However, all during the period certain grades in the professional and CAF services always had the same pay rates. The principal link between these separate services was the equation of P-1 professional (beginning college graduate professional) with CAF-5 (a full performance secretary, accounting technician or personnel assistant).

Apparently, this resulted from the belief that a 4 year, that is, 36-month college education, was equivalent to 3 years of progressively responsible experience in a demanding office or technical job. When the two major schedules were merged into one by law in 1949, P-1 and CAF-5 became the single grade GS-5. The 10-graded CAF system became the first 10 grades of the new GS system. and with a several grade overlap—GS-5 through 10, the 8-graded professional system became the GS system's last 8 grades, and this is basically the system that exists today. One general schedule for virtually all white collar jobs in the civilian Federal civil service.

It is important to note that the National Academy of Sciences' study concluded that for all job evaluation systems:

> It must be recognized that there are no definitive tests of the fairness of the choice of compensable factors and the relative weights given to them. The process is inherently judgmental and its success in generating a wage structure that is deemed

equitable depends on achieving a consensus about factors and their weights among employers and employees.

The minority report, although giving support to the idea that the content of jobs can be evaluated neutrally, stressed that any such system had to be correlated to existing market values. The major criticism leveled at existing job evaluation compensation systems, public and private, by comparable worth proponents, however, is precisely this perceived over-reliance upon the use of external market wage rates to set the pay of an organization's work force. They argue that since such reliance on marketplace rates tends to perpetuate differences in pay, comparability with the market, especially on a job-to-job basis, would simply reinforce such differences. Yet, even when there's agreement on comparable worth principles, it is difficult to decide how to deal with it. Even the National Academy of Sciences' Report cautioned that their methods were experimental and did not specify how one gets from fair job evaluation on the one hand, to comparable worth on the other.

But what is not experimental is job evaluation in the Federal Government. It is fair in its own context and it exists independently of the issue of comparable worth.

When I say the system is fair, however, that does not mean it's perfect. Human beings are not perfect. For example, this administration has discovered substantial misclassification by agencies of Federal jobs. Not only is overclassification unfair to taxpayers since it is expensive, but, if one assumes sex bias on the part of Federal management, one must assume such bias carries over into misclassification. It follows that the lack of proper classification by agencies would be a major source of sex bias in the work force rather than just imperfections in standard setting.

Also, it should be noted that in its 1982 study, "Breaking Trust," the Merit Systems Protection Board reported that by far the largest number of reports of observed group discrimination was against nonminority males. It may be argued that Federal employees are not the best evidence on such matters since OPM evaluations have not detected such violations. On the other hand, employees may have better access to and therefore knowledge of these matters than outside evaluators.

I would be much less than candid if I didn't also admit that there is a signficiant judgmental factor in job evaluation itself. Although criteria intended to be objective are used, and numbers are even the final product, judgment is involved in every stage, even of the standards process. Clearly, this is so for the major factor decisions made throughout the process.

When setting standards evaluating jobs, there must be some perspective according to which OPM operates. First, one could be simply arbitrary or biased. Clearly this is unacceptable. A second perspective is to rely upon the experts in the professional associations which certify the occupations. In general, however, the interest of such an association is to restrict entry through credentialing, to limit supply and, therefore, increase the compensation of those already certified.

This Director's approach has been to limit credentialing to the minimum necessary to provide for the knowledge, skills, and demands necessary for performing the work. In this way, the market is able to work to its maximum, to allow the greatest amount of opportunity to all potential applicants for the position. This limit on credentialing is especially beneficial for women, since historic educational and cultural patterns in many occupations have made it difficult for some women to accumulate extensive formal credentials.

We are working to rid the system of as many restrictions to entry, like credentialing, as we can. Yet, I might add that in each case where I have attempted to do so, substantial opposition has been generated.

To achieve the uniformity assumed by comparable worth advocates, it would also be necessary to consider the wage grade system. At present, 450,000 Federal employees in blue collar, more unionized occupations, are not integrated into the white collar job evaluation system. We would expect very substantial union opposition to such an effort.

I would like to stress again that, even if all of these changes were accomplished to make the job evaluation system more equitable, this would still not be a comparable worth system. As two staff members of the National Academy of Sciences have previously testified to this committee, there is still the question of relative worth. As they noted, relative worth is a matter of values. It is a difficult problem to measure values and worth. Whose values do we rely upon? Mine? Yours? Really, the only way free societies have found to do this is to refer to the value choices which exist in the market. But this brings us full circle again, since it's often these values which are objected to by the proponents of comparable worth.

Given present knowledge regarding the setting of the worth of a job, I do not see any alternative to having the final touchstone for setting worth to be the market. Fair job evaluation can only go so far. We should continue refining our classification system but, unless new ideas are developed, we cannot go much further without being arbitrary.

At the second day of the last hearings you held on this subject, Congresswoman Ferraro really asked the central question. She asked, how could one determine worth if neither market forces or job evaluation techniques do it? Thomas Donohue, Secretary-Treasurer of the AFL-CIO, said that worth must be determined in the private sector by joint agreements reached by labor and management. This means, in effect, relying upon the market. This is the necessary answer to the question for the private sector.

The Federal Government must follow the private sector. Our whole compensation system is based upon the principle of comparability to the private sector. Although adherence to that principle has been difficult in recent years, the principle itself remains the only one under which we can operate and be justified to the public as fair and not arbitrary.

In conclusion, Madam Chairwoman, I believe that we at the Office of Personnel Management have made and are making progress in improving our system of classifying and evaluating Federal jobs. Until some other system can be devised to be equitable to all employees, the Office of Personnel Management remains dedicated to the setting of fair standards through job evaluation for its employees, fair enforcement of classification decisions in the agencies for its employees, and creating a more accurate pay comparability system for the Government.

I hope these actions will be of some benefit in achieving the fair classification and pay system which all Federal employees deserve. That concludes my prepared statement and of course I will be happy to answer any questions that you may have.

Ms. **Oakar**. Thank you, Dr. Devine, for your statement and for being here today. Let me just say that I'm glad the Office of Personnel Management is doing a study on this issue; it's overdue.

You know of course that my legislation calls for much more than that? It asks for a detailed study. Until we got your testimony, we didn't know you were conducting the study. If you'd like to share the framework with my staff, we'd be very grateful.

My legislation asks that you report to the President and Congress on sex-based wage discrimination in the Federal sector within 6 months of enactment, make recommendations for change, and include a timetable for implementation.

We're asking you to really put forward a plan of action, once you study it, and we give you a framework by which to study it. You did mention the National Academy of Sciences and you said, in part, that job evaluations are largely judgmental.

For the record, let me ask you a judgmental question. Do you think that there are some women in the Federal work force that are not paid adequately for the work that they perform?

Dr. **Devine**. I'm sure there are cases, certainly.

Ms. **Oakar**. That's a start in the right direction, in any event. I was going to ask you about the proposal to change the standard for librarians. Since there is a lawsuit pending, I won't ask you about that occupation.

In your testimony before the subcommittees in 1982, you stated, and I quote: "If women are going to be given a shot at traditionally male dominated occupations, it is critically important to reduce the barriers to women's entry into those occupations."

Yet, when we review the full-time civilian white-collar employment data for the Federal work force, it becomes readily apparent that women are still clustered in the lower graded clerical, technical, and administrative positions. As a matter of fact there are nearly six times as many women in GS-4 clerical positions as men, while men outnumber women by more than 10 to 1 in professional positions above GS-12. I was pleased to hear of your new women's executive leadership program. It's a step in the right direction; although I think it's late and too small.

What other actions has OPM undertaken since the executive leadership program to recruit women into higher graded professional positions? Have you had a zealous program to get women into the, as you say, traditionally male-dominated occupations?

Dr. **Devine**. And you want me to exclude our premier program from my answer, is that how I interpret the question?

Ms. **Oakar**. Well, how are you doing?

Dr. **Devine**. Well, how about that one. I think that's a pretty good program.

Ms. **Oakar**. How many women have you hired that are now in executive positions?

Dr. **Devine**. We have, as a matter of fact, hired a person who appeared as a critical witness at these hearings before, and said that that was a problem in the Government. We were responsive to that issue raised in your committee; we acted to set the program up. We set it up as an elite pilot program that can be copied around the agencies, and frankly it's a little discouraging to hear it's too little, too late.

We think it's a good program and we have to start somewhere and this program makes sense. It was raised to our attention for the first time at these hearings; it is not an inordinate amount of time to get a program into existence after consulting with the many groups that we did throughout the Government. For example, we spoke with many of the women's program heads throughout the Government. We think that it's a good program and it's an important program.

We identified two major gaps in our Federal service. One was we weren't getting enough women into the higher grades, the 13 to 15 level, and then into the senior executive service. We asked women's group representatives and many other members of the public what the reason was for that as they saw it.

They all universally focused on the problem in the GS system just below the 13, roughly, the 9 to 12 category, as the area in which dead-ending took place. So we focused our program and it's 50 people to start off, which is more than the White House Fellows or the President's executive exchange program. We want to keep it a prestigious thing at least Government-wide; we're hoping that agencies will also adopt the program internally for themselves, but we identified what we consider one of the real problem areas, the GS-9 to GS-12 category in which special training has to take place. Of course, we do massive amounts of training——

Ms. **Oakar**. Can I just interrupt you for 1 minute? When did you start the program? I'm not skeptical by nature, but isn't it true that you just put out your release 2 days ago? Can it possibly be that we inspired you by the announcement of these hearings?

Dr. **Devine**. Well, I can just show the committee, I'd be happy to do—all the steps that we've taken over the last year or more to go through the process of setting this plan up and to do it in the best way and to have the best person in charge of doing it, and it takes a lot of coordination and a lot of time. I'm glad that it's out now.

Ms. **Oakar**. I am glad it is, too. Let me ask you this question. Is it our understanding, and correct us if we are wrong, that for the past 2 years you have failed to deliver reports to Congress on the Federal equal opportunity program as required by the Civil Service Reform Act of 1978. This program is designed to encourage affirmative action.

Have you delivered the reports; and if you have not, why have you not?

Mr. **Devine**. I appreciate you asking that question, because I would like to publicly thank Congressman Hoyer, who is in the room, for bringing that to my attention at a hearing last Thursday, that those reports had not been submitted.

I went back to OPM somewhere around 1, and I told them that if those reports were not up to Congress by 12 the next day, that they were going to have to answer to me for it. They got up that day. I apologize for it. It was a bureaucratic snafu within my organization.

I take full blame for it. I apologize. But as soon as I heard it, I got it up to you.

Ms. OAKAR. Well, I accept your apology, and I am sure that Congressman Hoyer and others do also.

But, Dr. Devine, you see the problem. The perception that you are being fair to Federal employees has been discolored. Perhaps it was an honest mistake. We will accept that for the record.

It is my understanding as well, though, that OPM has discontinued a form that would ask applicants about their race, sex, and ethnicity. Some felt that this was a form that would give OPM a systematic method of collecting data on affirmative action.

Why have you discontinued that form, how do you really know who you are hiring?

Mr. DEVINE. Exactly for the reason that you mentioned in your question. And that is that it does not provide systematic data; 40 percent according to the figures that we have, of people do not fill out that form. And that ranges from zero in the quality-assurance specialist's category, only 16 percent of psychologists fill it out, 29 percent of housing project managers. For some, it goes up much higher.

But the overall average is only about a 60-percent completion rate. And I can tell you as a person who is certified at the top level of proficiency in survey analysis by Syracuse University and has appeared in court as an expert witness on survey technology, and taught in the graduate school at the University of Maryland for 13 years on this subject, that anything with a 40-percent nonresponse rate is not statistically usable.

Second, we still, of course, continue to collect that information through our central personnel data file which does give us an accurate or relatively accurate reporting system to collect what the law requires. And that is a comparison between Federal Government employment and private-sector employment among different groups.

We are doing precisely what the law requires us to do in that area. And I would like to——

Ms. OAKAR. But if the private sector is your benchmark, then the practice appear to be even more unfair as judged by some of the statistics. Women in the private sector make less than they do in the Federal sector by a few pennies.

Why would you use them as your avenue of comparison?

Mr. DEVINE. That is not mine, that is the law.

Ms. OAKAR. Do you feel that you have any role of advocacy in this as head of an agency that is responsible to civil servants?

Mr. DEVINE. Sometimes when I exercise a little discretion, I get slapped down by Congress.

Ms. OAKAR. Well, I can assure you that you would not be slapped down if you tried to work harder for pay equity for women.

Mr. DEVINE. Madam Chairman, I would like to——

Ms. OAKAR. I would be your friend and protector.

Mr. DEVINE. Thank you. I would like to read a letter that I had forwarded to me by Congressman Anthony Beilenson.

Ms. OAKAR. Beilenson from California.

Mr. **Devine**. He sent me a letter from an individual, and I would like to quote some of that to you. It says:

> I am a Los Angeles Postal employee, and I feel my civil rights have been violated by my employer. Tuesday, January 17th, I was directed to go to Room 207 to take an examination and fill out a form. I did not feel grateful for nor appreciate the definition of black on this form.
>
> We were not informed in advance that the questionnaire was going to take place. Why not? Instead it was sprung on us placing most of us in a state of shock, as race is a delicate subject.
>
> As my elected official, I would appreciate any interest or help that you could give me regarding this matter.

Now I do not know what the answer to that is. But I will tell you that I have difficulty responding to that letter. I think that this is a very, very complex subject area in which some people feel that their civil rights are threatened.

I can understand someone, especially in a minority group, who would feel intimidated by checking a box on a form when they are going to take an examination to get in, and wonder if that is not going to be held against them.

So I have concerns at that level, too. But the basic problem is anything with a 40-percent nonresponse rate cannot be very accurate. And maybe a lot of that response rate is people who feel intimidated by that process, and feel that their civil rights are being abridged.

And we get the data in the central personnel data file for employees in any event. So I think that we have the useful data, and the data required by the law. So that is why we made the decision not to go ahead with that form.

Ms. **Oakar**. But you say that you have made a concerted effort to have the data, so that you would know who is applying for these executive positions that you are going to reach out to try to recruit more women?

Mr. **Devine**. The law says, and I believe correctly, and that is one of the concerns that I have with these record requirements in general, the law says that our job is to do outreach efforts. That is the law. And that is what we are doing, and that is what the agency is doing.

We can do better, we should do a lot better, but we are reaching out. That is the critical part of the program, not filling forms out which is simply informatory. And it is interesting in fact that nobody noticed that for almost 2 years. And I apologize, I did not, I should have known about it, too. Do these reports really do a lot of good? Is not the important thing that the agencies and OPM are out there trying to recruit people in? That is the critical part, it seems to me.

Ms. **Oakar**. That is the critical part. If you do not study the problem to see where it is, how are you going to know whether you should be doing it?

Mr. **Devine**. We do it from the central personnel data file. That is how we know. We compare it against the private sector, which is the comparison that the law says we should make.

Ms. **Oakar**. Dr. Devine, you know and I know that this administration is not an advocate for pay equity. That is why we are trying to force to do it now.

Mr. **Devine**. I do not buy that.

Ms. OAKAR. You do not buy that?

Mr. DEVINE. We had Democratic candidates here saying that they are going to study the factor evaluation system. We have a President who is already studying it. We are ahead of it.

Ms. OAKAR. You are studying it. When you heard about this hearing, you decided to study it; and that is when you put out your press release. You did not want to be embarrassed. But I do not buy the fact that you are advocates, and we know you are not. And we hope that you do better. We think that it is important.

Mr. Hoyer.

Mr. HOYER. Thank you, Madam Chair.

Doctor, first let me observe that I was very pleased to read on page 17, the last full paragraph in which you deal with pay comparability generally, where you indicate that we have had difficulty in adhering to that principle.

I presume that by this paragraph you do accept the fact that we are substantially behind in meeting pay comparability generally, am I correct?

Mr. DEVINE. You know the answer to that question. No, I do not.

Mr. HOYER. Well, then my next question is what do you mean by that paragraph?

Mr. DEVINE. I mean that we have had difficulty defining in an operational way what comparability is. I have my view of what it should be. The present process cranks out a number that one could take as valid and some do. And there are those who think that that is not high enough to represent the difference between the private and the public sectors. But that to me is an operational or measuring question rather than a conceptual one that we agree that should be comparable.

In fact, you may remember at that luncheon that we had at the Washington Post, many were surprised to hear Mr. Blaylock and I agree on the principle of comparability. The problem is operationalizing it and measuring it. And there we differ profoundly.

Mr. HOYER. I understand that. I am looking forward to your study.

How is that going. Have we let the contract?

Mr. DEVINE. On pay?

Mr. HOYER. On what you are going to be giving us in a report?

Mr. DEVINE. I believe it has. I did not come prepared for that today, but I believe that it has been let.

Mr. HOYER. All right. Doctor, let me go back to your statement, if I might. On page 2 of your statement, you refer to section 2301 of title V, principle 3. "Equal pay should be provided for work of equal value with appropriate consideration of both national and local rates paid by employers in the private sector."

And Ms. Oakar, the Chair, correctly noted, and we have had testimony to the extent that the private sector is from a comparative standpoint further behind in terms of equal pay for work of comparable value.

If that is the case, do you believe that the language of principle 3 included in title V, section 2301 ought to be amended?

Mr. DEVINE. To strike out the private sector?

Mr. HOYER. To the extent that we accept the principle that the private sector is further behind than the Federal sector, if by only pennies, but by percentage points. Is it then an anomaly to relate us to a less successful system if in fact the objective is comparable pay for work of comparable value?

Mr. **Devine**. I believe that the intention of that section was by the blue collar unions to insure that although the Civil Service Reform Act itself did not deal very directly with the blue collar wage system, we recognize that there are national and local rates, national under the general schedule, and local under the blue collar wage schedule system.

I think that is the purpose of that clause in there rather than making a comparison to the private sector. Because, of course, both of those systems in theory are related back to comparability with the private sector.

Mr. **Hoyer**. Do I understand you to say then that it is a geographical differentiation as opposed to a job-by-job evaluation of value placed on it by the private sector?

Mr. **Devine**. One of the problems with the principles there, in my opinion, is they should have listed about 12 or 15. They list several bracketed within some of the numbering systems. I think that that is the intent of that. And, of course, the principle does not refer directly to the classification systems which are more directly dealt with in 5101 and 5105.

And there it is supposed to be an internally justified system rather than an externally justified system. It is important to remember that the classification system is in theory independent of the pay system. Now we know in fact that that is not true.

But the idea is to separate the one from the other, and to have an objective classification system that is set independently of pay. Of course, general schedule grades do have a pay set to them. But they are basically adjusted by an increase factor rather than a change in the basis structure of the pay system.

Mr. **Hoyer**. Let me ask you about the factors, the nine factors, that are included in 5104, is that correct?

Mr. **Devine**. No, sir. The nine factors are included in the factor evaluation primary standard, which came out of the law, and was submitted to Congress, because it was required to under the law. But it is not precisely in the law. The law does list the general descriptive levels of the grade ranges. I believe that is 5102.

Mr. **Hoyer**. All right. I am informed we have a vote. There was not a buzzer, but apparently there was a vote. There are two bells indicated up there.

Can you tell me what factor three is? I understand, I think, the other nine factors, but I am not sure that I understand factor three, guidelines.

What do guidelines mean?

Mr. **Devine**. Guidelines mean the degree of detail that individuals have to operate under in order to perform their jobs. The broader and less specified the guidelines, the more responsibility a person has for interpreting in between the spaces.

Mr. **Hoyer**. All right. I have some other questions. But because of the vote, I will desist, Madam Chair. Thank you for allowing me to participate.

Ms. **Oakar**. Thank you. I just want to make one quick observation on the kind of examples that we are discussing. Now most secretaries are women, and most managers are male. She is paid according to the grade level of her boss, not for the performance of what she does. This is the kind of thing that we are talking about, Doctor. While we applaud the fact that you are going to study the problem, our legislation calls for a plan of action. And that is what we are going to be expecting once we pass the legislation.

Thank you very much for being here.

[The following response to written questions was received for the record:]

OPM RESPONSES TO PAY EQUITY QUESTIONS

1. Q. I am pleased that you have undertaken the study you announced in your testimony. When do you anticipate completion of the study? How many staff are involved in the study?

Did evidence of sex discrimation prompt you to take this action? If not, what caused you to initiate the study?

Would you be willing to share the findings and recommendations with the Subcommittee? I would also appreciate your briefing my staff as soon as possible.

A. We expect to complete the study of the standards development process and its relationship to wage determination before the end of the year. All of the members of our Office of Standards Development are working on the project.

Evidence of sex discrimination was not the reason for my initiating the study. Rather, I decided a full review of standards development policies and operations was overdue, since the framework for the current system was established over sixty years ago. Although the current system insures that Federal positions are treated consistently and equitably enough to meet with our legal obligations, we will investigate whether we can make the process fairer, more effective and more efficient.

We will be happy to share the results of our study with the subcommittee. An initial briefing with subcommittee staff was held on April 18, 1984.

2. Q. What other actions or studies has OPM undertaken, if any, to assure that its current job evaluation systems minimize the impact of systemic sex bias?

Once again referring to your testimony, you cited the National Academy of Sciences report and stated that the characteristics which the NAS believed to be pre-requisites for a "comparable worth" job evaluation system are essentially the same under the current Federal job evaluation system.

It is also true that the NAS set forth optional statistical adjustments that could be used in a job evaluation plan to compensate for inherent, sex-based discrimination. Has the OPM sought to apply these, or any other, statistical adjustments to the Federal system?

A. Although we have not evaluated the Federal Government's job evaluation system specifically for sex bias, the entire system has been thoroughly examined several times by indedpendent bodies and no charges of discrimination have ever been made. Extensive evaluations were carried out by the Rockefeller Commission (1975), agency personnel directors and chiefs

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of classification (1981), the Grace Commission (1983), and the National Academy of Public Administration (1983). Since our system is so open and public, we believe any serious bias would have been identified during these extensive investigations.

We are taking action in related areas to ensure that the present trend of women's movement into higher paying occupations is encouraged. We have taken action to reduce credentialing, which works against women and minorities in hiring and advancement. We have also established the Women's Executive Leadership Program to direct more attention toward the systematic provision of management development of women in grade levels 9-12. (See our response to question 3-C.)

It is incorrect to say that the NAS report proposed "optional statistical adjustments that could be used in a job evaluation plan to compensate for inherent, sex-based discrimination." To describe these as "optional" suggests that the statistical adjustments are well developed and ready to use at an employer's option. This is simply not true. The NAS report did outline two experimental statistical approaches but also cautioned as follows:

"We wish to make clear at the outset that we discuss these approaches because of their potential and not because of their proven value. They are at present completely untried, and their application would entail the solution of many theoretical and practical problems of measurement. There is also a serious question as to whether the quality of the data generated by job evaluation plans in current use is adequate to sustain the kinds of statistical adjustments we describe. Moreover, there is considerable debate regarding the interpretation of the statistics generated by these adjustments (specifically, regression coefficients), especially given imperfect measurement."

The NAS staff concluded:

"Hence, it would seem prudent to exercise considerable caution in applying them, attending carefully to both the statistical issue discussed above and to substantive concerns--the possibility that some workers may perceive new inequities as replacing old ones, that to avoid such perceptions may require a substantial increase in the wage bill for an enterprise, and that statistical adjustment procedures often generate tension between the need to eliminate discrimination for groups in the aggregate and the need to protect the rights of individuals."

It must be kept in mind that what may be optional for private employers is not so for OPM. Any changes must be proven consistent with the complex requirements of law.

I do not believe it is appropriate to use the Federal work force as the "guinea pig" in testing these very experimental and highly speculative statistical procedures. Further, I do not believe that a mechanical, ex post facto percentage adjustment of pay for certain jobs is the right or the effective way to deal with instances of perceived pay inequity.

The better approach, and one which will yield really long-term improvements, is to eliminate unnecessary restrictions on entry to occupations so that all potential applicants can compete. As I indicated in my testimony, we are doing this by working to remove unnecessary restrictions on entry to Federal jobs, such as the reduction of excessive credentialism.

3a. Q. The factor evaluation system was designed to replicate the results of the previous job evaluation system, which was rooted in the Classification Acts of 1923 and 1949. What evidence do you have that FES standards do not reflect the pre-existing biases?

A. The Factor Evaluation System (FES) does indeed incorporate the values expressed in the Classification Act of 1949 (5 U.S.C. 5104); however, there is no basis to assume these underlying values are biased. In fact, the intent of the 1949 statute was clearly nondiscriminatory; it provided for "equal pay for substantially equal work." The 1923 statute, from which the 1949 law evolved, provided for "equal pay for equal work, irrespective of sex." Since the basic statutes were designed to be nonbiased there is no reason to assume the FES standards are biased. Yet, we will look at this issue in our review to be sure they are not biased.

3b. Q. What steps, if any, does OPM take to ascertain that sex-based wage discrimination is not a factor in the evaluation systems used in private sector firms surveyed by the Bureau of Labor Statistics to obtain job matches for the Federal pay-setting process?

In other words, if a private sector firm discriminates against women then this data will be reflected in the Federal wage-setting process, tainting the entire system?

A. Under the law, the Bureau of Labor Statistics (BLS) in the Department of Labor conducts a survey of private sector pay that we are required to use as the basis for comparing Federal pay with private sector pay for the same levels of work. This survey does not relate to the standards process; however, we are concerned with the representiveness of the survey. OPM believes that the survey, by covering only a small portion of the private sector economy, produces substantially higher pay rates than a more comprehensive survey would. By making the survey broader and more representative of the entire non-Federal labor market, we will be eliminating any possible bias in the survey's choice of jobs and establishments that are covered.

3c. Q. OPM statistics indicate that the average salaries of Federal civilian males exceed those of females. To what extent are these differences attributed to differences in longevity, education, experience, or other factors? How much, in your opinion, are the differences attributable to discrimination?

A. There is no question that differences in longevity, education and experience contribute to the difference in average salary between men and women. I would like to point out, however, that although the average grade of men is higher than that of women, the average grade of women has risen over 4 times faster than that of men. Since 1974, average grade of men rose 4 %, of women, 17 %.

Although women are steadily moving into higher paying administrative and professional jobs, they are still relative "newcomers" as compared to men. Overall statistics on average salary reflect the differences between men and women in work force participation. For example, in the GS and equivalent 9-12 grade grouping, women held about 30% of the jobs in 1983 compared to 19% in 1974. Women held 10% of the GS 13-15 and equivalent jobs in 1983 as compared to 5% in 1974. Other data highlight the differences between the backgrounds of men and women. For example, as of September 30, 1983, the average length of service for men (full-time permanent) was 15.3 years and for women (full-time permanent), 11.3 years. The median for women is 3.2 years and for men 6.6 years compared to 2.5 and 3.8 respectively for the private sector. Women in Federal service are also younger than their male counterparts; as of September 30, 1983, the average age of men was 42.3; the average age of women, 38.8. Turnover rates also vary by sex. For example, we have actuarial data which show that 23.5% of men with less than 5 years of Federal service left the Government and withdrew their contributions to the Civil Service Retirement System; 54.5% of women were in the same category.

We are doing several things to retain women who would otherwise leave the Federal work force. Family responsibilties and an interest in acquiring further education are reasons women often cite for leaving. By working part-time, women can pursue these goals and still keep their jobs. Progress in expanding part-time employment has remained steady and we have recently issued guidance to agencies encouraging them to continue efforts to accommodate employees who wish to convert from full-time to part-time schedules. We expect further improvements in part-time opportunities in administrative and professional positions. There have already been notable increases in the number of part-timers serving in professional positions, e.g., an increase of 60% in the number at GS-13 and above since 1979.

Another policy initiative also affects a large group of women--those who go abroad as part of military or foreign service families. Under a new Executive order issued by this Administration, dependents who complete 24 months of service working in overseas positions outside the competitive service can qualify for direct appointment in the system upon their return to the U.S. An estimated 6,000 to 10,000 dependents will be able to qualify under this program. Further, employees who leave their jobs early in their careers to go overseas with their families will no longer be penalized for their break in Federal service. Under our new policy, dependents who leave to accompany their spouses overseas will be eligible for the full 3-year period of reinstatement eligibility after their return to the U.S.

4. Q. In AFSCME et al v. State of Washington et al, the Court found that discriminatory impact was sufficient to find a violation of title VII of the Civil Rights Act. Plaintiffs in State of Washington demonstrated an average 20 percent gap between the pay of men and women. According to recent data, a gap of approximately $10,000 per year exists between the average annualized salaries of men and women working for the Federal Government. Some leading experts believe that a similar showing to State of Washington could readily be made with regard to the Federal Government's pay structure.

Given these circumstances, aren't you concerned that the Federal system would not withstand the scrutiny of litigation? If not, can you tell us specifically why you believe the Federal program is free of systemic wage-based sex discrimination, when the empirical data and work force statistics would seem to indicate otherwise?

A. Without necessarily accepting all of the premises of your question, I would note that there is a significant difference between the 20 percent wage differential found to exist in the State of Washington's pay system and the $10,000 difference that you assert exists between the annual salaries of men and women who work for the federal government. The wage differential in AFSCME v. State of Washington was a gap between the wages of predominately male and predominately female jobs which were held to be comparable. On the other hand, the $10,000 figure represents a difference in the average earnings of men and women in the Federal work force. Thus, the average earnings of women in Federal service could be lower than men's because of the background factors discussed above. It is also true that women have less seniority, and seniority currently has a disproportionate impact on Federal salary levels. Our proposed regulatory reforms to within-grade increases and RIF's would have reduced some of this impact.

I would also stress that there are critical differences between the systems used in the State of Washington and the Federal Civil Service to set pay. The State of Washington based its wages on elaborate surveys of labor markets. On the other hand, as I testified before the Committee, the Factor Evaluation System used by the Federal Government is not tied diectly to market factors. Instead, it assigns numerical ratings to positions based on an analysis of the nine factors enumerated in my testimony. These factors focus only on the duties of the job; the sex of the person performing those duties is wholly irrelevant to the classification process. The pay range for each position under the General Schedule depends upon the position's classification. Because of the differences between the two systems, we do not believe Judge Tanner's analysis in State of Washington can be applied to the Federal Government's process for setting pay.

Although there are always risks in litigation, we believe the Factor Evaluation System is protected by the Equal Pay Act's fourth affirmative defense, "any other factor other than sex." (The Bennett Amendment incorporated this defense into Title VII.) This affirmative defense was established because Congress wanted to protect bona fide job evaluation systems such as the Factor Evaluation System. County of Washington v. Gunther, 452 U.S. 161, 171 (1981). We are confident that the Factor Evaluation System is such a bona fide system because the occupant's sex plays no role in determining a position's classification.

I should also note that many legal experts believe Judge Tanner erred in *State of Washington* when he applied disparate impact analysis in a sex-based wage discrimination case under Title VII. The Supreme Court itself suggested that disparate impact analysis may be incompatible with the Equal Pay Act's fourth affirmative defense, "any other factor other than sex." *Gunther*, 452 U.S. at 170. Other courts have said that only intentional wage discrimination is covered by Title VII. *See*, *e.g.*, *Plemer* v. *Parsons-Gilbane*, 713 F.2d 1127 (5th Cir. 1983); *Connecticut State Employees Ass'n.* v. *Connecticut*, 31 Emp. Prac. Dec. ¶ 33,528 (D. Conn. 1983); *Power* v. *Barry County*, 539 F. Supp. 721, 726 (W.D. Mich. 1982).

5. Q. Once again referring to your earlier testimony and your statement that the final touchstone for setting job worth must be the market, if market rates perpetuate traditional biases, how can Federal objectives of internal equity not conflict with external alignment?

What do you think of a practice that has been negotiated in some States and cities, such as Minnesota, Connecticut, and San Jose, California, where "pay equity" increases were given to employees in predominantly female job categories such as nurses and legal secretaries to partially compensate them for systemic wage-based sex discrimination? Do you believe that such a practice could be implemented in the Federal Government for similar occupations?

A. It is not clear that market rates perpetuate biases; in fact, where discrimination exists, the workings of the market tend to break down societal biases. As I said in response to question 2, I do not believe a mechanical, ex post facto percentage adjustment of pay for certain jobs is the way to deal with instances of *perceived* pay inequity. In the cases you cite, the governments did not have standards systems like the Federal Government's.

6. Q. What is OPM's current position on the appropriateness of the Federal Government using multiple job evaluation systems? In view of the fact that the Federal Government uses several different job evaluation systems, do you believe all jobs are appropriately aligned internally?

A. The Federal Government uses different job evaluation and pay setting systems for General Schedule positions and for Federal Wage System jobs. Each system was established by different statutes at different times, under differing circumstances. As I indicated in my April 3, 1984 testimony, we are now comparing the strengths and weaknesses of the Federal Wage System with those of the General Schedule and we are examining the rationale for maintaining these distinct systems. We believe an administrative review is a more prudent means by which to evaluate the complex differences which exist under these two very different systems.

7. Q. Which, if any, Federal job evaluation systems are "comparable worth" systems? How do the systems achieve this? (If some are and some aren't) what actions have you undertaken to correct the systems?

A. The statutes governing the job evaluation systems administered by OPM don't refer to "comparable worth". In enacting the most recent major revisions to civil service law (P.L. 95-454), Congress added the "merit principles" (5 U.S.C. 2301). The third Merit Principle states that "equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance".

In addition, the statute governing the General Schedule classification system (5 U.S.C. 3101) requires that "the principle of equal pay for substantially equal work" be followed in determining the rate of basic pay which an employee will receive. Prevailing rate system jobs are paid on the statutory principle that "there will be equal pay for substantially equal work for all prevailing rate employees who are working under similar conditions of employment in all agencies within the same local wage area". OPM administers the General Schedule and the Federal Wage System consistent with these statutory principles.

8. Q. Why is the average salary of a social insurance claims examiner, in which women outnumber men by a ratio of 6 to 4, nearly $5,000 less than a veterans claims examiner, which is a predominately male occupation? Why is the average salary of a dental hygienist, which is overwhelmingly female dominated, more than $4,000 a year less than a sign painter, which is equally male dominated?

A. The classification standards for social insurance and veterans claims examiner positions contain similar criteria for grading at levels from GS-5 through GS-12. Any resulting difference in average grade level will be due to a number of variables. For example, in an agency where employees typically begin their careers as claims examiners and then move into higher level management positions, the average grade of claims examiners will be lower than in an agency where there is less turnover in claims examiner positions. This is because the first agency will have more trainees on the rolls and less journeyman level claims examiners. In addition, the nature of operations may differ in various agencies resulting in different distributions of grade levels within a particular occupation.

Dental hygienist and sign painter positions are evaluated under two separate systems, the General Schedule and the Federal Wage System respectively. These systems are mandated by separate statutes which differ in concept. For example, the General Schedule operates under national pay rates, while the Federal Wage System is a locality-oriented pay system based on prevailing rates. Because of the different statutory bases for the two systems, we have not correlated them but have managed each system fairly and equitably. As noted in my answer to question 6, we are studying the relationship between the Federal Wage System and the General Schedule System.

9. Q. You seem to indicate in your testimony that much of the wage gap in the Federal Government is due to the overclassification of positions occupied by males. What data do you have to support this assertion? Are any positions, in your opinion, underclassified? If so, which ones?

A. My testimony did not indicate that "much of the wage gap in the Federal Government is due to the overclassification of positions occupied by males." The point I was making was that if you assume sex bias, you must also assume sex bias in the application of standards by agency classifiers. However, the data we have examined thus far would appear to indicate otherwise. Similarly, the MSPB study, Breaking Trust suggests that "reverse" discrimination may be the more relevant issue.

10. Q. It has been stated that under the FES system high points are assigned to positions that require contacts with high-ranking officials. Therefore, a nurse who must deal primarily with coworkers and who must assist patients and their families under great stress will receive fewer points than a hospital administrator who uses the same skills. The end result is that typically "female" jobs continue to be given lower grade status. Why is the system skewed in this manner? Do you think this is unfair, especially in light of your admission that there is a "significant judgmental factor" in job evaluation? Can we count on you to correct this situation?

A. Your question appears to imply that under FES points are assigned on the basis of the rank of those contacted without regard to the purpose of the contacts. On the contrary, both the purpose of the contact (Factor 7) and the kind of contact (Factor 6) must be evaluated together. Factor 6 considers the subject of the contact as well as the difficulties involved in making the initial contact or communicating with those contacted. Factor 6 also considers the setting in which the contact is made, e.g., the degree to which the employee and those contacted recognize their respective roles. Factor 7 considers such activities as exchanges of factual information and negotiations over controversial issues.

Thus a nurse who deals with patients and their families does not necessarily receive fewer FES points for personal contacts than a hospital administrator who deals with high ranking officials. For example, an administrator who comes in contact with high level Government officials who use the hospital's facilities would not receive the highest level of points under Factor 6 because the contact is not difficult to initiate and there is no difficulty in communicating.

The classification law and the Factor Evaluation System distinguish positions on the basis of level of difficulty, responsibility, and qualifications required by the work.

Ms. **Oakar**. We have two more witnesses. We have Ms. Florine Koole, who is with the Communications Workers of America. And we also have Ms. Sonia Johnson, who is a candidate for President from the Citizens Party. And we will be right back to hear from our two witnesses.

[Recess.]

Ms. **Oakar**. The committee will come to order. We will hear at this time, from Ms. Florine Koole, who is the assistant to the executive vice president of the Communications Workers of America.

Florine, we are very happy to have you. As a former member of the Communications Workers of America, I am very happy to have my union represented. So you may proceed in whatever way is most comfortable.

STATEMENT OF FLORINE KOOLE, ASSISTANT TO EXECUTIVE VICE PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA

Ms. **Koole**. Thank you, Congresswoman Oakar. I thank you for this opportunity to testify on pay equity, one of the most critical economic issues today. But first of all, I would like to apologize to you for being late today. We spent more time on Massachusetts Avenue than we really cared to today. And I appreciate being given the opportunity to testify in spite of that.

My name is Florine Koole. I am assistant to the CWA executive vice president in charge of collective bargaining. The Communications Workers of America represent some 650,000 workers in both the public and private sectors. About 55 percent of our members are women.

CWA has been active in the pay equity arena for nearly a decade. Most significantly, we have implemented a comprehensive pay equity program within AT&T and the Bell System, a program which promises to end pay disparity for as many as 1 million workers in every State and locality across the Nation.

We achieved this precedent setting program through the collective bargaining process. Thus, it has been CWA's experience that litigation is only one, albeit sometimes necessary, approach to pay equity. My testimony today will focus on the collective bargaining alternative.

Politicians in 1984, searching for votes, have concluded that the gender gap is for real. They are right. But the gender gap extends far beyond the political arena. There is a very significant, very real, very harmful gender gap in our factories, offices, restaurants, hotels, and governments—in virtually every single place where Americans work.

This gender gap has nothing—and yet everything—to do with the gender gap discussed by political pundits, because this gender gap is the huge disparity between wages paid to women and to men.

Women are segregated into low-paying, dead-end jobs. More than 80 percent of all women workers work in only 25 of 427 possible occupational titles. These workers are poorly paid. Working women earn less than men in every job at every educational level. The median wage for all full-time women workers was about $11,000, compared to $18,000 for men. Three out of five working women earn less than $10,000 per year. Only 1 percent earn more than $25,000 per year.

What lies beyond these statistics is the cold, hard fact of discrimination. As the National Academy of Sciences concluded, "the more an occupation is dominated by women, the less it pays."

This conclusion—and the snail's pace action to make it obsolete—are astounding. Not only is this condition offensive for social and moral reasons, but it is appalling for gut economic reasons: pay inequity represents a highly inefficient use of resources.

When women are forced to work in a female ghetto, talent and skills are ignored and squandered. Turnover runs rampant. Health care costs rise for stress-related illnesses. This costs employers a lot—not only in terms of money but also the less tangible costs of lost producitivity, restricted organizational development and the like.

But perhaps worst of all, with pay inequity, poverty becomes entrenched. It's no accident that poverty in America is rapdily becoming solely female poverty. It's no accident that by the year 2000, all poor Americans will be women household heads and their children.

This costs State, local, and Federal governments—and their taxpayers—a lot of money. As the U.S. Department of Labor points out in a recent study, if wives and female heads of households were paid the same wages as similarly qualified men, about half of all families living in poverty would no longer be poor.

CWA PROGRAMS

CWA long has been active in the pay equity arena. We are on the Board of Directors for the Committee on Pay Equity. We work closely with academic experts in this field, including the National Academy of Sciences, helping to develop job data, evaluation standards and the like. CWA delegates to the midterm Democratic Convention in 1982 also authored, advocated, and successfully incorporated a pay equity policy into the party's platform.

These all are important steps toward equality. But what women workers need is action and concrete treatment of the problem.

One of the single most effective tools to overcoming job and wage discrimination is the organization of workers into unions. I am joined in this belief not only by other labor unions, but also by policymakers and activists in this field. Recently, a Democratic congressional organization, in reviewing key 1984 election issues, said on the comparable worth issue that women can effectively protect their rights and help guarantee unbiased job treatment through unions.

CWA's policies and programs bear this out. Many of our precedent-setting actions have set the standards for current and future pay equity activities. This same congressional paper pointed to our activities as an example of effective treatment.

Much of CWA's work on pay equity has involved the private sector. But the conditions and problems unfortunately are the same whether one works for a private employer or a governmental unit.

Our experience, therefore, has been universally instructive, and hopefully will help this subcommittee. A decade ago long before comparable worth became a hot issue, CWA established a committee to examine the content of Bell System jobs.

The committee paid special attention to clerical jobs, many of which were undervalued over the years through job segregation and wage discrimination. The committee found three fundamental problems which led to discrimination:

First, a lack of uniformity in job titles. A job function was classified differently depending upon the location or division. Second, an excessive number of job titles. And third, a too-narrow clustering of pay rates, especially for clerical workers, which meant that a woman worker had to be promoted many times before she saw a substantial wage increase.

These findings, taken to the bargaining table, led to several reforms. Job titles were streamlined, increasing efficiency. And the two largest job classifications, containing hundreds of thousands of women workers, were significantly upgraded.

Perhaps most significant, these findings led to our precedent-setting 1980 agreement with AT&T to undertake a comprehensive comparable worth program which eventually could affect the Bell System's 1 million employees.

The 1980 national contract established a joint union-management job evaluation committee. Job evaluation is the cornerstone of pay equity. Without effective research on existing job content and on the hiring, pay, and promotion practices, there can be no real movement toward ending discrimination.

The joint committee established two key ground rules. One, that there had to be a carefully designed evaluation system to identify and score specific job factors. Two, that employees could appeal the scoring, job description, and relative worth of their jobs.

The committee then started its most critical task—documenting the work of AT&T employees. Fourteen test jobs representative of the race, sex, geographic, and occupational distribution of Bell workers were selected for indepth study.

With the job studies, the committee began to devise a set of compensation factors and a scoring system to evaluate jobs. There is no question that it was difficult to incorporate the principles of pay equity into the compensation factors. The joint committee was fighting years of sex differentiation in both the Bell System and society at large.

Past job evaluation actually transferred biases into the wage setting process. The job evaluation group, therefore, selected and measured factors that applied equally to both "men's" jobs and "women's" jobs. These factors, for example, accounted both for the heavy physical demand present in male-dominated jobs and for the physical stress, fatigue, and mental demands evident in female-dominated jobs.

The next step in this process involved testing the factors to purge the evaluation plan of any remaining biases. Recommendations for final across the board implementation were made in the 1983 collective bargaining session.

With federally mandated divestiture splitting up the Bell System, however, the AT&T and CWA pay equity program has moved from the national level to the local level. Now CWA and each Bell Operating Co., as well as each AT&T unit, will implement pay equity through individual joint job evaluation committees.

CWA's experiences in the private sector taught us a lot. I can't begin to catalog all the lessons but here are a few key items.

One, the commitment by employers to comparable worth must be strong. All levels of management, from the top down, must sincerely and actively work to eliminate discrimination. Hesitation, indecision, or incomplete commitment must be strongly discouraged and eliminated.

Two, resources must be available. An effective program must be built on a solid foundation. Accurate data collection and job evaluation set the stage. New York State, recognizing this, has committed $500,000 to study pay inequity and $1 million toward a planned reorganization.

Three, there must be real action in a timely matter. Lip service cannot continue. Studies must be started now and completed in a reasonable time, date certain.

Four, most important, there must be labor-management cooperation. Unilateral decisions by management will only result in a breakdown in the process. Workers should be involved from the start in evaluating jobs and developing job content measurements. Furthermore, there should be an appeals process to ensure workers are not frozen out.

Labor and management can work together, as we have proven in our AT&T experience. But if real cooperation is not encouraged, the results will end up meaningless.

PAY EQUITY MYTHS

There are three major myths advanced by pay equity opponents. I'd like to briefly deal with them.

Myth No. 1.—You can't compare dissimilar jobs: the apples and oranges argument.

Reality.—Private sector employers and the Government have always compared jobs. These comparisons have led to an organizational fact of life: hierarchy. Such comparisons, reflected in wage rates and job titles, form the foundation of virtually every single organization.

The key thing is that dissimilar jobs may not be identical, but they are comprised of equivalent tasks and characteristics.

Myth No. 2.—The free market determines wage rates and women's jobs simply command lower wages.

Reality.—Leaving aside the thorny issue of whether we really have a free market, in a sense opponents are correct. There's no denying that we have economically pervasive lower pay in women's jobs. But this does not make it socially or morally right, nor economically efficient.

Furthermore, workers always have had to fight for proper compensation. Women workers in female-dominated jobs are less organized into unions than men. As women enter unions, we hopefully will eventually see equity.

But must we face the prospect of strikes over this issue and of long battles in the courts and legislatures? No one will benefit if this is the only way female workers can achieve equality in the free market.

Myth No. 3.—Pay equity will cost too much.

Reality.—In several jurisdictions, the cost of equity has proven very modest. In Minnesota, for example, the hard data indicated that pay equity increases would only amount to between 2 percent and 4 percent of the total budgeted for State salaries.

Second, the costs of failing to implement comparable worth exceed the benefits. Better use of human resources will provide gains. And there's the simple fact that litigation—if necessary—will siphon off valuable resources.

Finally, the lack of pay equity costs the Governmnent and taxpayer a lot of money. As the Department of Labor has said, allowing women to earn the same amount as similarly qualified men could eliminate poverty for about half of all poor families. Poverty costs billions; pay equity can actually save money, therefore.

CONCLUSION

Pay equity is not a small issue of concern to only a handful of activists. It is an issue of discrimination against more than half of all Americans, namely women.

But more important, pay equity is a family issue. We have dispelled the myth that women work for pin money and luxury items. Women work because their families need their income. This isn't just true for women single parents, but for all households. Only those well off can afford to let one wage earner earn far less than she should.

America's courts have clearly stated that title VII covers the issue of pay equity. The time has come for all employers—public and private—to implement this critical program. This subcommittee's hearings are an important first step. CWA encourages you to continue calling for pay equity action and we freely offer you our experiences and assistance as we travel the road to equality.

Thank you.

Ms. Oakar. I thought that your statement was excellent, very comprehensive, and concise. You have the unique situation of working with management on pay equity. Would you recommend this procedure for other areas in the private sector.

Do you think that is the way that it should be done where you work together on correcting the inequities, or is there some other way? Are there disadvantages to that?

Ms. Koole. Well, in my opinion, Madame Chairwoman, I think that it is vitally important that labor and management do work together in a cooperative forum, not only to develop a job evaluation plan, but also to implement one.

I think the input from both parties is essential in order to have a fair job evaluation plan, so that we can make sure that people are properly compensated.

Ms. Oakar. The end result was the best result that you felt that you could get?

Ms. Koole. I believe so. I would have to say that in the operation of our joint committee, the joint committee that operated between 1980 and 1983, we would start out in great disagreement, as you know, we can in the telephone industry, but eventually we were able to work out our differences and arrive at a consensus. I think it was also very important at every step of the development of the plan to have not only rank and file CWA members, but also first and second level supervisors to provide input.

Ms. **Oakar**. I very often stress the idea that pay inequities result in very severe circumstances when a woman reaches retirement. We know that she is the poorest person in the country. We also know that the social security laws—which I am trying to change—are very inequitable toward all women. Private pensions as well leave something to be desired.

I was struck by some of your comments. You stated that pay inequity represents a high inefficient use of resources.

Can you expand on that a little bit more? I thought that it was right on target.

Ms. **Koole**. If an employer continues to discriminate against women workers, they are not benefitting from the greatest potential that that employee has. I also think that in more recent years, that while we tend to think of discrimination as being a female, or even pay equity as being a totally female issue, that it really is not, particularly in the telephone industry.

As changing technology takes place in the telephone industry, some of the former highly skilled, highly paid male dominated jobs are being changed. It is important that we identify the new skilled jobs, so that not only will women have opportunities, but also we can identify new jobs for male workers who are being displaced.

I think that if we can get to that point, then it will provide job opportunities for both male and female workers, and it will provide valuable resources to the employers.

Ms. **Oakar**. Well, that is an important point. In no way do we want this to seem as if it is a confrontation between men and women. We feel just as strongly about the manner in which men are treated in the workforce.

The problem is that the inequitable question of pay is more often related to women than it is to men. We do not want any male's pay decreased. We just want women's pay to be increased to the level that is fair.

Thank you and your union for appearing today.

Ms. **Koole**. Thank you. It was my pleasure.

Ms. **Oakar**. I do want to explain to you and others that we were gone for awhile, because of votes on two issues.

Our last witness is Ms. Sonya Johnson, who is a candidate for President, representing the Citizen's Party. Thank you very much for your patience. The Chair has admired you at a distance for a long time. I admire your stand on the Equal Rights Amendment. I know the personal costs that it meant to you.

We would like you to proceed in whatever way is most comfortable.

STATEMENT OF SONIA JOHNSON, CITIZEN FOR PRESIDENT

Ms. **Johnson**. I'd like to thank you, Congresswoman [illegible]akar, and the members of your subcommittee for the work that [illegible]u're doing on the issue of comparable worth, which has become, of course, one of the major civil rights issues of the 1980's.

I'm especially grateful for these two pieces of legislation which spell out the specifics of pay equity for women and minorities, and I know that today and tomorrow that you're going to hear all the specific merits and demerits of this concept and of your bills, and I hope that today I can contribute with a slightly different perspective to the thinking on this subject. And appreciate the opportunity to appear before you today to testify as a feminist for the women of this Nation who have waited too long for justice.

The United States is part of a global society in which physical, emotional, spiritual, and primarily economic oppression of women has been the norm for nearly 5,000 years. This massive oppression, this violence, has been the model for all other oppression, all other violence, that is, since it has been legitimate, and believed to be natural? Even sanctioned by God for one-half the human family to rule the other half in every race, every country, every major society on Earth; it's no wonder that all other oppression, all other violence, is regarded as legitimate. One nation's ruling another; people of one color ruling people of another color, the rich ruling the poor; the strong the weak, and so on. In this way, economic violence and all other violence has become acceptable behavior.

And become, indeed, a global habit of mind, a very dangerous global habit of mind ultimately lethal to us all. The women's movement has arisen just in this time in history, just in the nick of time, I think, to help us make the crucial connections between violence against women and violence against the planet and against the human race. It's arisen to prophesize that if we can't stop in even one U.S. city—even one of the multitude of violences against women—in this case economic violence, we have no hope for global peace.

The women's movement has arisen to teach us that peace and justice are inextricably connected; that we can only learn what peace is, what's necessary to have it, in the microcosm of our own homes and workplaces. And that only having learned, in the microcosm, how to have peace, can we then project this knowledge into the macrocosm and have peace on the planet. The lesson of the women's movement is central therefore, to the major problems of our time.

Central and urgent. Today therefore in this hearing, Congresswoman Oakar, those of us testifying for the just principle of comparable worth are doing a most important work of peace—possibly the most important work possible, in fact, for the survival of the planet and for the human family.

Thank you again for your work and for inviting me to be part of it.

[The statement of Ms. Sonia Johnson follows:]

PREPARED STATEMENT OF SONIA JOHNSON

I am Sonia Johnson, Candidate for President of the United States of the Citizens Party.

I applaud Congresswoman Mary Rose Oakar and the members of this subcommittee for your work on the issue of comparable worth, equal pay for work of comparable value, which has become one of the major civil rights issues of the 1980s. I appreciate the opportunity to appear before you today to testify on behalf of the women of this nation who have waited far too long for justice.

According to a study done by the National Commission on Working Women, "a wage survey conducted in Philadelphia in 1833 showed women received less for their 78-hour work week than male workers were getting from one 10 hour day." As we sit here today in 1984, women in the United States who work full time still earn less than 60 percent of the average male's wage. That means that American women must work nine days to earn what a man earns in five days. Discrimination on the basis of sex accounts for this earnings gap. And, our sisters of color, who suffer the double burden of discrimination on the basis of race, made disproportionately less than the average.

It has been evident for many years that occupational segregation is a major cause of the national wage gap between men and women. The overall earnings between men and women is greater now than it was in the 1950s, and an analysis of the reasons make it clear that women are caught in low-paying jobs and that when women go into traditionally male-dominated jobs, the pay decreases rapidly. While women occupied 68 percent of clerical jobs in 1959, they held 80 percent of that category by 1978. Today, 80 percent of all women who work are found in four low-paying job categories.

The issue of pay equity is at the heart of women's poor earnings and, indeed, increasing poverty. It is a national scandal that women and children have experienced a slide into poverty so rapid that we are told that by the turn of the century all persons in poverty will be women and our children. At the same moment, we are spending unprecedented dollars on military hardware, redistributing our national budget away from human needs to the military.

It is no surprise to the women of this Nation that the Reagan administration is leading the opposition to the issue of pay equity. Mr. Reagan has made it clear to women that the trickle down theory will take care of our needs, and that the marketplace will bring us equity. He voices his opposition to the issue of pay equity by lifting up the objections of employers that changing wage structures to reflect pay equity for women would disrupt the entire economic system of this country. But, this is an economic myth which is being challenged by the women of this nation. We are being joined by a few corporations and state and local governments which have voluntarily structured their wage and job evaluation systems to provide more equitable compensation and opportunities for all employees, including women and minorities, without suffering economic disaster.

To paraphrase the Supreme Court in *Corning Glass*, companies may want to be unjustly enriched by taking advantage of a situation where they can pay women less than men, and that "may be understandable as a matter of economics," but the law requires "that these depressed wages be raised as a matter of simple justice."

Fannie Lou Hammer said it all, "Women are sick and tired of being sick and tired." Women are tired of the trickle down theory. We are demanding that "justice roll down like a river" so that the women of this Nation may live as citizens of equal work and value.

Ms. OAKAR. Thank you, Sonia. Look, let me ask you one question which probably will be the ultimate question. If you were President of the United States, what priority would this issue have?

Ms. JOHNSON. Well, you know there are a lot of ways to win besides winning the White House and one of them is to be able to say where I'd put such a thing if I were President of the United States, and where I'd put it as you can imagine, is very high indeed because in a society that values money above almost all else, unfortunately, which is us and most of the rest of the global society, and judges human beings by how much they earn, how much they're worth in the market, equal pay for comparable worth is a principle, if followed, which would do more than simply cause economic violence against women to disappear, but which would also give women the kind of status that means that many of the other violences against us, physical, spiritual, would also disappear. Just absolutely top priority for that reason.

As I say, when we are monetarily inclined and that's our principal motivation, then it is one of the prime things we have to do and this, of course, one of the reasons the equal rights amendment was so important as well. And is.

Ms. **Oakar**. I believe that the issue of pay equity for women is a question of survival. Don't you feel that way?

Ms. **Johnson**. Oh, my Heavens yes. Absolutely. I'm a displaced homemaker myself. I'm one of those women who didn't get any child support, who didn't get any alimony; who had to suddenly—suddenly out of nowhere—support four children all on my own. I understand precisely what this is all about.

Ms. **Oakar**. And you're now running for President of the United States?

Ms. **Johnson**. And can you imagine anybody more qualified to solve the problems that we see before us. I mean what motivation did all those men have, except perhaps Jesse Jackson, for wanting to change this system? That's the reason you run, as a woman, of course, is to say these things.

Ms. **Oakar**. Well, I want to thank you very much for appearing before the committee, and again, I apologize for the long wait but we tried to take the list from the order in which people said they wanted to participate. We are glad you asked to participate and the Chair is honored to have you here.

Ms. **Johnson**. Thank you.

Ms. **Oakar**. Thank you very much. This is going to conclude our hearing for today. We are going to proceed tomorrow with another round of hearings and will be hearing from Clarence Thomas who's the Chair of EEOC. Mr. Thomas will be discussing EEOC's activity in this area.

We're also going to be hearing from several private sector unions and Federal employee groups. Phyllis Schlafly, president of the Eagle Forum, who has a somewhat different opinion than the Chair on this issue, will be appearing as well.

I want to conclude by thanking the people responsible for getting such excellent witnesses. I especially want to thank my staff, without who's work we couldn't have proceeded today.

The meeting is adjourned.

[Whereupon, at 3:10 p.m., the hearing was adjourned, to reconvene Wednesday, April 4, 1984.]

FEDERAL PAY EQUITY ACT OF 1984

WEDNESDAY, APRIL 4, 1984

House of Representatives,
Committee on Post Office and Civil Service,
Subcommittee on Compensation and Employee Benefits,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:10 a.m., in room 311, Cannon House Office Building, Hon. Mary Rose Oakar presiding.

Ms. Oakar. The subcommittee will come to order.

Today we will complete our hearings in Washington on H.R. 4599 the Federal Employees' Pay Equity Act of 1984, and H.R. 5092 the Pay Equity Act of 1984.

We are going to have other hearings during the summer, throughout the country, because we think this is an issue of concern to women across the country.

During yesterday's hearing we received testimony from nationally prominent witnesses including spokespersons from the three Democratic Presidential campaigns. The presidents of the National Organization for Women; the Service Employees International Union; the National Education Association; representatives from the Communication Workers of America; and the Director of the Office of Personnel Management.

Most of what we heard yesterday centered around the fact that sex-based wage discrimination is a pervasive problem in our society. Women who occupy jobs that are female dominated earn especially low wages.

Witnesses also stated that, in part, the wage gap persists because the Federal Government is not enforcing adequately current equal pay laws.

I am certain that Mr. Clarence Thomas who is the Chairman of the EEOC will address this issue when he appears later in the hearing.

We are also going to hear from a number of employee representatives as well as economist and other interest groups.

I welcome everyone to the hearing. I look forward to receiving the testimony.

I would like to at this time acknowledge, Congressman Bosco.

Mr. Bosco. Thank you, Madam Chair. And once more I would like to express my gratitude to you for bringing this important issue to the forefront of public consideration.

I have remarks that I will submit for the record, but in deference to the witnesses I will conclude my opening statement now.

Ms. **Oakar**. Thank you very much. And thank you for your presence yesterday. Our hearing lasted about 6 hours yesterday, and I was pleased to have you there the entire time.

At this point I would like to submit for the record a letter from the president of the AFL–CIO, Lane Kirkland.

Without objection we will submit his entire letter for the record.

[The letter from Mr. Kirkland follows:]

STATEMENT SUBMITTED BY LANE KIRKLAND, PRESIDENT
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
TO THE SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS, COMMITTEE ON POST OFFICE AND CIVIL SERVICE, U.S. HOUSE OF REPRESENTATIVES ON PAY EQUITY LEGISLATION

April 4, 1984

At its Fifteenth Constitutional Convention in October 1983, the AFL-CIO adopted the following statement on the pay equity issue:

> The AFL-CIO urges its affiliated unions to work to attain pay equity through collective bargaining agreements that upgrade undervalued job classifications, and when a union determines that such factors as legal limitations or the employer's bargaining policy make it necessary, to seek pay equity through administrative and judicial redress.

We are pleased at the results of the work which AFL-CIO affiliated unions have been doing in the area of pay equity, results which will be reported to this Subcommittee in the course of its hearings.

We also commend the initiative of this Subcommittee and its able Chairwoman, Rep. Mary Rose Oakar, in providing, through these hearings, a very valuable opportunity for an extensive review and expression of public interest in this matter of growing public policy concern. Pay equity is a basic human and civil rights issue and deserves the widest possible forum for education and discussion.

The concept of equal pay for comparable work is of major importance to organized labor. The labor movement was founded on the principle that every worker in this country has dignity and that the job that he or she performs has worth for which the worker should be fairly compensated.

The labor movement has organized, led and participated in many activities to promote that principle through child labor laws, minimum wage laws, collective bargaining laws, civil rights and women's rights laws.

Unions are engaged in the fight for pay equity because of that principle. We know that discrimination in the compensation of jobs held primarily by women exists. We have been working to eliminate that discrimination for years by organizing women into unions and by collective bargaining. We have also used litigation as a tool to press for equal pay for jobs of comparable worth.

We do not believe that any of the excuses that have been given for ignoring the segregation of women into low-paying jobs and the discrimination that exists in compensation is legitimate. That segregation and discrimination exist has been well documented by numerous studies that have shown:

- Women earn 60% of what men earn. Eight out of ten women work in just 25 job categories.
- A male clerical worker earns $100 more per week than a female clerical worker.
- A woman with a college degree earns less than a man with an eighth grade education.
- Minority women -- suffering from racism and sexism -- have the lowest earnings of any group of workers.

Title VII of the Civil Rights Act of 1964 bans all forms of sex discrimination in compensation. In Gunther v. County of Washington, the Supreme Court ruled, as we had argued, that Title VII of the Civil Rights Act permits all claims of sex-based wage discrimination and is not limited to discrimination which also violates the Equal Pay Act of 1963. Thus, existing law provides the legal tools to achieve pay equity.

What is needed today, as it has been needed since the Gunther decision in 1981, is enforcement of Title VII. Enforcement means prompt investigation of claims of sex discrimination by all appropriate agencies. Current practices of agencies in this area -- particularly the lead agency, the EEOC -- are shameful.

Enforcement also means implementation of pay equity for federal employees as mandated by the Civil Service Reform Act of 1978, in conjunction with federal labor unions. Enforcement agencies must involve labor unions in their efforts to eliminate wage discrimination.

But law enforcement is something for which this Administration has no enthusiasm, at least when the laws to be enforced are those against discrimination. Despite the clarity of the Court's pronouncement in Gunther, nearly 3 years ago, and the many charges filed with the EEOC by AFL-CIO affiliates and others, the EEOC has yet to act in this area. The world will not stand still simply because the Administration does -- AFSCME has won an important victory in its Washington State case which the AFL-CIO, if not the Administration, will be actively supporting on appeal. But the law will not be developed as rapidly as it should without a strong federal government lead, in part because private parties will be limited in what they can do by the immense cost of precedent-setting litigation.

Of at least as great importance is the impetus that federal government activity gives to voluntary compliance with the law when the government makes plain its intention to see that the law will be upheld. It is an unhappy fact that the message the Reagan Administration inactivity is sending to the employers of America is that sex discrimination in wages and salaries is not really very important or very wrong.

That same message, of course, is sent by the Office of Personnel Management's refusal to acknowledge, much less put into practice, the Civil Service Reform Act's specific call for pay equity in the federal executive branch.

Members of Congress now have, I believe, a singular opportunity as overseers of the federal establishment. The federal government itself offers a peculiarly appropriate laboratory for further development of the concept of pay equity, both in Executive agencies and in those agencies that under the direct supervision of the Congress, such as the Library of Congress, the General Accounting Office and the Government Printing Office. The legislation now pending before this Subcommittee, H.R. 5092, Pay Equity Act of 1984, and H.R. 4599, Federal Employee's Pay Equity Act of 1984 both recognize and address themselves to this responsibility. The federal government should be taking the lead in dealing with the evident systematic wage bias against women workers.

Ms. **Oakar**. Our first witness is the Honorable Leo McCarthy who is the Lieutenant Governor of the State of California.

Leo, we are very happy to have you here. And as I told you privately, having a sister-in-law whose maiden name is McCarthy from Ohio, I am certain she will be happy to know that the McCarthy clan is well represented in California. But we know of your work in this area, and I am very pleased to have you appear before the subcommittee.

I would like to acknowledge Congressman Bosco, if you would like to say a few words about the witness.

Mr. Bosco. Thank you, Madam Chair. I have known Leo McCarthy for many years. He has served in our State legislature. He was the speaker of the California Assembly during the period of time when enormous progress was made in helping people in the workplace. He is a friend of small business in particular. And I think a person who represents tremendous balance in making public policy.

At present he is serving as our Lieutenant Governor in a situation where we have a Republican Governor and a Democratic Lieutenant Governor. But characteristic of Mr. McCarthy, he is able to operate effectively under those circumstances, and I think has done a great deal to make California the type State that can be at the forefront of providing comparable pay and comparable work conditions for men and women.

I am very proud to have him here. I think his testimony will speak for itself.

Ms. **Oakar**. Thank you very much, Congressman.

Lieutenant Governor McCarthy, you can proceed in whatever way is most comfortable.

TESTIMONY OF HON. LEO McCARTHY, LIEUTENANT GOVERNOR OF THE STATE OF CALIFORNIA

Mr. **McCarthy**. Thank you very much. Thank you for allowing me this opportunity to testify on a subject which is a growing concern across the country. The issue of pay equity cuts through all strata of our society. We know it is there. We know that injustices exist. But we are not quite sure how to bring about the solutions.

You will hear during these hearings from those who will tell you that this sort of economic discrimination is all right—that the way things are, is the way they should remain. But we know that there is a real inequity being perpetuated or we would not be here today, during these days, to address this problem.

Recognizing that there is a problem is one step. Doing something about that problem is another step. But there is a third step which seems to many eyes to be the largest leap of all, and that is to measure the impact of the proposed solutions. There are real fears that any effort to rebase the workplace wage structure on the value of the job performed may have a catastrophic financial impact.

Let me talk about the California experience for a moment, and tell you what has already taken place in the State which has faced, at least in part, the problem of comparable worth and these pay equity issues at both the State and the local level.

Longstanding California law requires equal pay for equal work performed under similar conditions. It prohibits discrimination on the basis of sex. From that basis, other steps would follow.

In 1982, a law took effect setting comparable worth as the State's official policy in establishing salaries for jobs dominated by female employees.

For the first time, this statute eliminated the prevailing wage as the only standard to be used in setting pay scales.

In 1983, a resolution was passed setting up a task force in our State to study policies of equal pay for work of equal value in the California workplace. And in that same year a Senate bill required the University of California and the California State College and University system, 19 campuses in all, to study their wage practices where compensation is based upon sex, with a report to be made to the legislature soon.

In that same year again, an assembly bill banned local governments from ruling out comparable worth as a factor in salary negotiations. All those measures are now law.

The line of policy is clear and distinct in California. Unfortunately, so is the lack of real, concrete action to improve the situation. We may know what we hope to accomplish, but we have still done very little toward turning theory and principle into dollars-and-cents fact.

In several localities, however, direct action by city employees and local officials has produced results. In San Jose a 9 day-strike centered on the issue of pay equity. Studies there showed instance after instance of discriminatory wage setting. In a job evaluation study, using the widely accepted Hay Method of determining value, typist clerks were rated equal to the male-dominated custodians—but the custodians got $90 a month more in their paychecks.

On the rating scale, electrical foremen and city nurses were considered equal in value, yet the nurses were paid more than $300 a month less.

Another category: principal clerks, mostly women, were rated significantly higher than the predominantly male painters. However, the painters were paid $209 a month more.

The strike in San Jose produced results; 60 female dominated types of jobs got wage increases of 5 to 15 percent—a rather substantial step towards workplace equality.

In other localities, similar stories. In Los Angeles, a 1980 agreement brought comparable worth adjustments for 12 clerical classes of jobs. The city of Woodland in 1983 began closing a 31 percent pay gap between its male and female employees.

Progress is being made city by city. It is slow. It can be frustrating. But each reform makes the next that much more feasible. And each helps to begin defining the economic impact of comparable worth principles applied to the marketplace.

For the most part, frankly, we are still studying, still trying to understand what is fair to everyone. But there is a growing urgency about these studies, a realization that we must have answers to highly significant questions. How much will comparable worth cost? How will it work? What will its impact be on employment opportunity?

As Lieutenant Governor of California I chair the State's economic development commission. One of my first official actions was to establish a commission task force on the feminization of poverty. And that task force has set as one of its prime goals a thorough study of occupational and pay disparities in California. That study is now underway and going to make recommendations later this year.

Still, as we talk about and think about widening career opportunities for women, and narrowing or eliminating the pay gap, we inevitably come back to a final sticking point: How much is it going to cost us and governmental agencies?

In the opinion of the courts, cost is no justification for the failure to eliminate illegal discrimination. The claim that an unjust practice bears a cheaper price tag is hardly an adequate defense for prolonging the injustice.

Nonetheless, we are developing some information about costs.

In the case of San Jose, settling its strike and equalizing wage practices for 500 to 600 employees cost less than $2½ million spent over a 2-year period. Statewide, California has identified four female-dominated bargaining units of public employees, which seem most in line for equalizing salaries. If these 64,000 State workers, including nurses, office workers, librarians and those in education and social services support—were to receive an increase in pay of 20 percent, the State's payroll would increase just slightly more than 3 percent. And if that increase were to be phased in over a 2- or 3-year period, as has been the practice elsewhere, its impact could be absorbed without serious problems.

The argument that no sizable government has the resources to cope with such a problem of equalizing wages is left wobbling on its own preconceptions by the California figures. The cost can be phased in. But the process of wage equalization should start its timeframe immediately.

There is one other economic factor frequently and conveniently overlooked by opponents of comparable worth. Studies indicate that a consistent policy of equal pay would elevate a substantial number of families out of the poverty classification a very real long-term benefit to government and to all taxpayers, not to speak of the families involved.

My point, obviously, is this. The consequences of eliminating unfair and potentially legally actionable wage discrimination are hardly catastrophic in scope.

It is within reason, and within reach, to bring about near equality of pay and opportunity in our society.

You will hear today the arguments of those who feel the comparable worth is a concept destructive both to a free market economy and to the sanctity of the American home.

The reality, of course, is that the average home now is a two-salary family; 62 percent of all married women in this Nation work. And there is no reason to believe that easing the financial burdens of married couples will do anything but make their lives less stressful and more fulfilling.

As for the free market argument, let me observe that I believe strongly in free market principles, which allow rewards according to ability. But these are times there have been times in the past, when the free market principle was misused. It was misused to try to prohibit an employee's right to bargain collectively. It was misused when we wanted to ban discrimination in employment, when it was based on race or age or sex. And the argument of the free market principle in those instances, I do not believe is any more applicable than it is now.

What we need, Madame Chair and Congressman Bosco, is Federal action to lead the way to take a giant step toward ending wage discrimination in the civil service and to enforce Federal laws against discrimination in compensation.

Further, we need to couple this action with Federal support for a wider occupational spectrum for women; 80 percent of working women are now employed in only 20 occupational categories out of 420 as described by the Bureau of Labor Statistics.

Women must have equal access to that broad range of work opportunity that until now has been out of their reach.

By so doing, you will have expressed a firm Federal commitment to ending the economic exploitation of an endangered resource: the women of this country.

Thank you very much.

Ms. OAKAR. Thank you very much, Lieutenant Governor.

And, first of all, I want to say that I am very pleased with the work that you have done in California. My own State of Ohio has some catching up to do. I am proud to say that our Governor, our new Governor has appointed a task force and plans to do something about the manner in which the State of Ohio treats its State employees. I think that activity in the States on the issue of pay equity is a very significant sign, even though it is somewhat embarrassing that on a national level, we have not done our fair share of what should be done; in fact serve as the momentum for the State governments to do the same.

I was struck by your testimony in which you mention that, even when the rating is the same in terms of the value of male jobs and female jobs, that women make significantly less.

Mr. MCCARTHY. That has been proven again and again.

Ms. OAKAR. I think your ideas on phasing it in as well as the women's contribution to the economy if you pay them properly are right on target. Too often the dollar amount of changing the pay scales is over emphasized, while the financial loss to women is deemphasized.

So, I want to thank you very much for being here.

Mr. Bosco.

Mr. MCCARTHY. Thank you.

Mr. BOSCO. I have one question, Madame Chair.

Mr. McCarthy, is this a women's issue or is it a men's issue or a family issue or a children's issue?

Mr. MCCARTHY. Well, Congressman Bosco, I do not view this as a women's issue. And anybody who describes it that way anymore does not have an accurate perception of the makeup of the work force in America.

When we now know from the census that 62 percent of married women in America are working, when we know just in California that 600,000 women are heads of household with dependent children, we must understand that this is a family issue.

We are talking about the fiscal, and with that, the emotional stability of many families across this Nation.

If we were discussing these issues in terms of the context of the work force 30 years ago, perhaps those who describe this narrowly as a women's issue could get away with that description.

That is simply, however, in today's terms, not a reflection of the work force.

Mr. Bosco. Thank you.

Ms. Oakar. Thank you very much.

Mr. McCarthy. Thank you.

Ms. Oakar. And we are very glad that you took the time to come to Washington.

Our next witness is the Honorable James Oberstar of Minnesota and the Honorable Jim Bates of California; both Congress Members who are very supportive of issues that relate to fairness.

We are especially pleased that you could come to take the time out of your busy schedules, Jim and Jim.

Mr. Oberstar, would you like to begin?

STATEMENT OF HON. JAMES L. OBERSTAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. Oberstar. Thank you very much, Madam Chairman. I apologize for being delayed this morning. We were at a parent-teacher conference with our 10-year-old, and that took a little longer than I anticipated and I got stuck in traffic.

Ms. Oakar. Well, we were just talking about how this issue is a family issue, Jim. I think you relate to that in your own situation as well.

Mr. Oberstar. It is very much indeed a family situation, and I might say that I got my first lesson in pay equity at home from a working mother. My father worked all his life in the underground iron ore mines in northern Minnesota.

My mother worked in a shirt factory in town, not because she wanted to, not because there was some unfulfilled dream that she wanted to accomplish in a shirt factory, but because she had to, in order to make ends meet, in order to get those little extra things that made life enjoyable, and oftentimes the necessities of life.

And what she worked for was just barely the minimum wage. There hadn't been a minimum wage law—I am sure it would have been a pay a good deal less. That brought home to all of us the need for adequate pay for women as well as men in the work force.

I'm here in support of the Federal Employees Pay Equity Act and the Pay Equity Act of 1984, both H.R. 4599 and H.R. 5092. Wage discrimination based on sex and job segregation in the workplace is common, entrenched, and far-reaching.

It's a painful fact familiar to all too many women who seek employment at a decent living wage. Despite passage of the 1963 Equal Pay Act and the Civil Rights Act of 1964, the gap between men's and women's wages has not decreased in the last two decades. It's either remained the same, and in some cases it has widened.

Women continue to earn some 60 cents for every dollar earned by men, and even if you adjust that figure for factors such as the

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lower seniority of women and the fact that they are in and out of the work force, you can still explain only half of the gap.

Job segregation accounts for much of the remaining gap. The fact is that women are concentrated in a very small number of low-paying occupations; 80 percent of women work in only 25 of the Labor Department's 420 occupations.

Secretaries, 99 percent female. Nurses, 97 percent. Elementary teachers, 84 percent female. Cleaning and household service workers, 98 percent female. Clerks, 86 percent female.

And all those occupations consistently pay less than occupations dominated by men: truck drivers, plumbers, janitors, mail carriers, meat cutters. The fact is that the average working woman now earns some $9,350 a year compared to a working man's wages of $15,730.

And even if they have equal educational achievement, you still find that the gap has not been narrowed significantly so far as earnings are concerned. Women with a college education often earn less than men who have completed only the eighth grade.

The wage differential is even more critical for poor women, often the single head of the family, sole provider, working to escape the welfare rolls. A 1981 report by the National Academy of Sciences said that not only do women do different work than men, but the work women do is paid less.

And the more an occupation is dominated by women, the less it pays, and that is just plain unfair, it ought not to exist in our society. This committee has an opportunity to do something about it.

Cities and counties, States all across the country, questions are increasingly being asked and confrontation being made about the fairness of paying nurses less than tree trimmers, secretaries less than custodians, female cooks less than male bakers.

And, I might add, by my 14-year-old daughter, who says "Why should I get paid less for spending four hours with a family's precious three children than my older brother does for cutting their lawn?"

In my State of Minnesota, a job evaluation study found that women who were employed by the State earned less than their male counterparts, and the pay gap had widened from a $4,190 gap in 1976 to a $5,013 gap in 1980.

Job segregation was the principal reason for that gap. Almost half of the women employed by the State are clerical workers, while a fourth are craft workers, and they are men.

Men's jobs are higher paid than the women's jobs. The State has an evaluation system under which points are attributed to jobs based on know-how, on problem-solving, on accountability, on working conditions.

A delivery van driver and clerk-typist 2 are each worth 117 points, so they're roughly equal, yet the mostly male-occupied delivery van driver job pays $16,584 a year, while the mostly female clerk-typist 2 job paid $13,380 a year.

A Minnesota study showed that librarians earned $1,825 a month compared to a vocational field instructor at $2,260, and an unemployment tax examiner at $1,961. Under the State evaluation system, both of the male-dominated jobs have fewer points than the librarian job.

Librarians should be paid equal or more, and yet it was paid less. The State went on to pass legislation to deal with that problem. The Minnesota Council on the Economic Status of Women made a number of recommendations resulting in legislation approved by the State legislature in 1982 that earmarked $21.7 million to make pay equity adjustments. Some 7,400 State employees benefited from that legislation.

The interesting thing is, to counter the argument that if you pay women it is going to break the bank, the Council on the Economic Status of Women found that the increases amounted to only 2 to 4 percent, not of the total State budget, but of the budget for salaries.

The hourly pay for clerk-typist 2 will increase 23 percent, but the total budget for salaries will increase barely 2 to 3 percent.

State and local governments have taken the lead in the fight for pay equity. That is a role that the Federal Government should have played, and the time is long overdue for the Federal Government to set the pace, to act decisively to end wage discrimination and insure economic equity for women.

The Pay Act of 1963, and I can remember that, having served on the staff here, we thought it was going to make broad sweeping changes, require employers to pay the same wages to both men and women for work that requires equal skill, effort, and responsibility.

And yet it hasn't worked that way. Even the Civil Rights Act of 1964 prohibits discrimination in pay, and that hasn't proved effective. It wasn't until the 1981 Supreme Court case that we had some court action determining that wage discrimination based on sex is illegal, even if the jobs compared are entirely different.

That began to turn the clock in the right direction. More recently, the *AFSCME* v. *State of Washington* decision last year, the Court found that the evidence is overwhelming that there has been historical discrimination against women in employment in the State of Washington, and that discrimination has been and is manifested by direct, overt, and institutionalized discrimination.

I haven't seen a statement that states the case as well, as succinctly and as dramatically as that Court decision. Institutionalized discrimination, overt and direct. The decision had a very important aspect in requiring—or finding that the State discriminated on the basis of sex by paying predominantly female jobs less than predominantly male jobs that required equivalent or lesser composite of skill, effort, responsibility, and working conditions.

Now, the current administration came into Washington with a commitment to pay equity, and yet the Reagan administration and the executive branch agencies charged with enforcing the laws on wage discrimination have failed to do so.

In 1981 this administration proposed to remove language encouraging Government action to correct sex-based wage discrimination from an outstanding Executive order.

In 1979 and 1980 the Equal Employment Opportunity Commission played a leading role in employment—in equal pay cases. Yet when this administration came into office, President Reagan did not nominate any EEOC Commissioners until August 1981, and when they did take over, the new appointees expressed their opposition to correcting sex-based wage discrimination, and they made it clear to employers that they had nothing to fear from the Equal Employment Opportunity Commission.

And in the absence of positive action under the executive branch, it is up to us in the Congress to take decisive action. Laws may not change attitudes. They can change the course of action by Government and by private employers and by setting a framework of law. Eventually attitudes also will change.

I congratulate you, Madam Chairman, for holding these hearings, for your constant dedication to this cause, setting the pace and the tone on this vitally important question of pay equity.

Ms. **OAKAR**. Well, thank you very much, and thanks for the work that you've done, not only as a Member of Congress but as a staff person prior to that. The Fair Pay Act is very important in establishing what the law prohibits.

We're also happy to have with us Hon. James Bates from California, who's always on the side of fairness, and we're glad you could come, too, Jim.

Would you like to proceed?

STATEMENT OF HON. JAMES BATES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. **BATES**. Thank you, Madam Chairman and Congressman Bosco. I appreciate the opportunity to provide a short statement on the H.R. 4599, the Federal Employee Pay Equity Act of 1984, and H.R. 5092, the Pay Equity Act of 1984.

I'm a cosponsor of both pieces of legislation, which are designed to alleviate the unequal treatment of women in our society. I think you've heard a lot of the facts. I'll reiterate briefly some of those that indicate women, working women, earn on the average less than 60 cents for every dollar earned by the average male worker.

Couple this with the fact that most women workers, over 80 percent, occupy only 20 percent of 427 job classifications listed by the Department of Labor. These are the so-called traditional women's jobs. They're indispensable to our society—such fields as teaching, nursing, child care, and clerical services.

And yet those persons holding those jobs have consistently received low wages. The higher the ratio of female workers to male workers in a particular category, field, the lower the wages in that particular field.

The traditional job evaluation and classification systems have tended to favor male workers and have undervalued the work that women have performed. There is definitely a need to conduct research in the area of compensation and job performance, and to develop more equitable and quantitative methods which would take into consideration the similarities in education, skills, responsibilities, and working conditions.

It is such criteria upon which equal pay for jobs of comparable worth is based, and that's why I think these two bills which are being studied in these hearings provide us with an excellent first step in that direction.

The current administration has been hesitant, to say the least, in enforcing the letter and the spirit of the Equal Pay Act of 1963, title VII of the Civil Rights Act of 1964 as it pertains to the gender gap in wages, and it seems to be incumbent on all of us, particularly in the Congress, to address this situation and to remedy it.

And this legislation, which champions the cause of pay equity in the Government itself, could provide a compelling mandate for other agencies and businesses in our society to take similar steps.

Thank you.

Ms. **OAKAR**. Well, thank you, Jim, and I just want to say that we're really grateful for your support and your cosponsorship of the legislation. Obviously the women in the House can't do it alone. There are 21 of us out of 435, so we need all the male support we can get. Your sensitivity, most importantly, concerning the issue is very, very important to us.

Thank you very much, both of you.

Mr. **OBERSTAR**. Not as scintillating a performance as you had before this committee yesterday, with all the TV lights and bright personalities that were here, but our commitment is equal and serious and genuine, and we will unite behind your leadership on this issue to get these two pieces of legislation enacted.

Ms. **OAKAR**. You know, Jim, we have a very interesting forum today, as well. I think you'll find that in terms of substance, this day's hearing will be just as important. You're certainly a valued contributor to that.

Thank you.

Mr. **OBERSTAR**. It was a delight to hear you on the network news last night.

Mr. Bosco. Madam Chair, I would just like to say that before Congressman Oberstar leaves, that though the performance yesterday was scintillating, no one had the courage to bring up babysitting and lawn-cutting in this context. I admire you for that. [Laughter.]

Ms. **OAKAR**. Our next witness is Ms. Diana Rock, director of women's activities for the department of the American Federation of State, County, and Municipal Employees, accompanied by Rita Wallace, who is the executive vice president of the Nassau County Local 83 CSA AFSCME 1000.

I'm very honored to have you here, Diana and Rita. Your union has been in the forefront in defending the rights of its women members. Certainly, the case that AFSCME won in the State of Washington was extraordinarily important in putting this on the front burner. Once again it is an issue.

So we want to thank both of you for being here, and for all the support and work you've given to our office, as well.

Diana, would you like to proceed? We will submit your entire statement for the record, without objection, and you may proceed in whatever way is most comfortable.

STATEMENT OF DIANA ROCK, DIRECTOR OF WOMEN'S ACTIVITIES, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, ACCOMPANIED BY RITA WALLACE, EXECUTIVE VICE PRESIDENT, NASSAU LOCAL CIVIL SERVICE EMPLOYEES ASSOCIATION

Ms. Rock. OK. Thank you very much. Thank you for the opportunity to be here to testify on behalf of the two bills that you have introduced.

It is appropriate that you would show the leadership at the Federal level. As you mentioned earlier, Ohio has shown real leadership at home, also.

The bills you've introduced will serve as a very important signal around the country to those that are considering comparable worth bills, to those that fear it somewhat; and to those that have followed the issue and know that the time for comparable worth has come, there will be a great sense of satisfaction.

Particularly on behalf of the AFSCME members in eight States and cities who filed EEOC charges, and had those charges fall on deaf ears of the Federal Government, I particularly express their thanks to you in hopes that this action—just the very hearing itself—will help EEOC take the issue a little more seriously. But certainly the enforcement and the reporting mechanisms in your bill will give them no choice if they choose to be reluctant.

There's no need to repeat the compelling statistics that have been given by others in terms of why the need for this kind of legislation, and what the results of discrimination in the past has been on women and men in female-dominated jobs across the country.

We have been gratified by the kind of action that we've seen already taken by a number of States—States represented by witnesses here, and States such as Minnesota and California. In Washington State much has been written, and much has been said about the case there. There are a couple of points that I would like to make that often go unsaid about the case.

We all talk about the cost of pay equity, and it's certainly a factor that people should be aware of. But let there be no mistake from anyone in this room that sex discrimination in compensation, called comparable worth, and called pay equity, is clearly illegal. It's illegal in every State because of Federal law. Additionally, 13 States have passed their own laws formally using the phrase "comparable worth" in the State law.

Discrimination against women in sex-segregated jobs is such an invisible kind of discrimination that it's almost been accepted as a part of the system. And the attention that these hearings give to that issue will go a long way toward taking the veil off of this invisible discrimination.

But talking for a minute, if I may, about the Washington State case, a lot of people don't realize when they hear the big price tag, and it can range anywhere from $500 million to $1 billion in terms of the final amount that will be assessed on the State of Washington, that as far back as 1973 AFSCME members asked the Governor of the State to take a look at their State system. It seemed to them that there was no justification for the discrepancy in salaries among women and among men except that women tended to be in sex-segregated jobs and those jobs paid less.

The Governor of the State at that time asked the two personnel agencies of the State to do an internal study. They studied a small sampling of sex-segregated jobs, and concluded that they could find no explanation for the discrepancy in salary.

They then commissioned a larger study now made famous by the Willis Associate study, and that organization took a much larger sample, and again determined that there was no explanation for the vast discrepancy in salary except that women in female-dominated jobs were simply paid less.

In 1976 the Governor put money in the budget, a little over $7 million, to start redressing a remedy to the people in those female dominated jobs.

That Governor left office. A new Governor came in and immediately took that money out of the budget. For the next several years AFSCME members there asked the Governors, two Governors, to put that money back in the budget and to simply follow the results of their own repeated studies. Their request fell on deaf ears.

In 1981 nine AFSCME members there filed EEOC charges on behalf of all of the men and women in female dominated jobs. In 1982, when EEOC had not acted on those charges, AFSCME filed its intention to sue.

Ironically, shortly following, when AFSCME made it clear that we would sue, the legislature put $1.5 million in the budget along with a bill that sounded very nice; that said that perhaps their system was unfair. It certainly wasn't illegal, but perhaps it was unfair. And in 10 years they wanted to bring all the female dominated jobs up to where they should have been, and put $1.5 million in the budget to do that. That's less than $100 gross for the 15 to 20,000 people in those jobs. Statisticians estimated it would have taken 80 or 90 years to achieve equity at the rate that they were going.

The final cost will be, and it's not yet determined, but the final cost will be, as I said, between $500 million and a $1 billion. What people seldom realize with that cost, and that certainly is imposing, is that two-thirds of that price tag is back pay because the State refused for years to address the problem that they identified.

So it's important for people to understand that most of that money, again, is back pay, would not have been necessary if they had simply responded to any one of the requests that AFSCME made over a period of 10 years.

Another case that I would like to point out because it's been greatly underreported—I guess it isn't as sexy as a billion dollar lawsuit—what Minnesota did. We see that as a textbook example of how pay equity ought to be handled where collective bargaining agreements cover employees.

The union there put pay equity on the negotiating table. The first 2 years it didn't go anywhere. Then after the court case in 1981 the Supreme Court decision in *Gunther,* people were more serious in Minnesota about negotiating for pay equity. About $22 million was set aside out of the State personnel budget. Again, that was 2 to 4 percent of the total personnel budget, not the state budget.

Pay equity in 1982 and 1983 is being phased in and over 9,000 employees in the State of Minnesota, are receiving increases. The amount of those increases were negotiated through our union there, and done in accordance with the Commission on the Status of Women study.

And so pay equity is a matter of fact in Minnesota, and the reason no one heard about it is because it just worked right. Reasonable people sat down over a negotiating table and worked out a reasonable settlement. You haven't heard about it like you've heard about the State of Washington because Washington was a situation where people had to be forced through a court order to enforce the laws of the land.

And they have, of course, still even appealed the decision, and that appeal is pending.

Pay equity is costly, but I would like for you to consider the cost to the employees affected in the State of Washington. For this period of 10 years after the problem was first identified, women were paid on average about 22 percent less than men were paid.

Ten years later when the situation was finally resolved at the district court level, the gap had widened to over 30 percent.

And if you think about the people that were not able to buy homes; the people that were not able to go back to school, it's a sad statement for a State who's required to enforce the law to be one of the most flagrant violators of the law.

The Equal Employment Opportunity Commission has testified before other congressional committees that they have reviewed over 250 cases that they have identified as comparable worth cases, and have not found any that they found meritorious to investigate. I hope that the hearing, and the attention put on this issue today will perhaps have them reconsider some of the charges that have been filed against them.

Ms. OAKAR. Well, Mr. Thomas is our next witness.

Ms. ROCK. Yes. Ronald Reagan is the only Presidential candidate, to my knowledge, that does not have a position on pay equity one way or another, and we find it incredible that someone could be running the Government 3½ years and not have any stated position on what is considered by friends and foes of the issue to be the civil rights issue, the women's issue of the 1980's.

I would like to introduce Rita Wallace, who is a member of AFSCME, and is a registered nurse, and is one of those people that has filed charges with EEOC, and she'll talk about her personal frustrations, and personal experiences when the charges that have been filed have been ignored.

[The statement of Ms. Rock follows:]

PREPARED STATEMENT OF DIANA ROCK, DIRECTOR OF WOMEN'S ACTIVITIES, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES

The American Federation of State, County and Municipal Employees (AFSCME) appreciates the opportunity to present testimony on pay equity before the Subcommittee on Compensation and Employee Benefits.

Pay equity is a priority of AFSCME's. Among AFSCME's million members are 400,000 women, over half of whom are clerical workers, the remainder work primarily in other traditional women's jobs like secretary, nurse and librarian. Pay equity is critical to the economic well-being of AFSCME's women members and their families. AFSCME President Gerald McEntee has said "The battleground for women's rights is the workplace and pay equity is the issue of the eighties."

AFSCME's commitment to pay equity goes back to 1973 in the State of Washington where we initiated the first public sector pay equity study. Since 1973, AFSCME has documented pay discrimination throughout the public sector. AFSCME is pledged to eradicating pay discrimination through collective bargaining, litigation and legislation. Collective bargaining offers the best hope for prompt correction of pay discrimination. In the absence of litigation, it may also allow employers to avoid back pay and to phase in the equity adjustments over several years.

Indeed, thousands of AFSCME-represented workers in traditional women's jobs have already received substantial pay equity adjustments at the bargaining table. In San Jose, California, Spokane, Washington and the State of Minnesota pay equity is being phased in to correct the underpayment of women's jobs identified by job evaluation studies. In St. Paul, Minnesota and the State of New York, AFSCME and the employers have negotiated job evaluation studies. Any disparities uncovered will be dealt with through negotiations. Without doing formal studies, AFSCME affiliates in New York City, Los Angeles and San Mateo County, California have negotiated upgrades for female dominated classifications which both parties have agreed are underpaid.

AFSCME has strongly supported state and local legislative pay equity initiatives. A number of states and localities now have legislatively mandated pay equity studies under way and bills have been proposed in many others this year.

AFSCME will continue its efforts at the bargaining table and in the courts to eliminate wage discrimination. Vigorous enforcement by the responsible federal agencies as proposed by H.R. 5092 and H.R. 4599 is necessary, however, if private enforcement is to be credible and wage discrimination is to be eliminated.

I. The Law

A. Sex-based wage discrimination is illegal - even where the jobs are totally different. This concept is no longer debatable.

Title VII of the Civil Rights Act, as well as Executive Order 11246, expressly prohibit an employer from discriminating in compensation.

Nearly three years ago, the Supreme Court declared that sex-based wage discrimination is illegal even if the jobs being compared are entirely different.(1) The Supreme Court found that if a differential in pay results in whole or in part from sex discrimination, such wage differential is illegal if the skill, effort and responsibility of the different "male" and "female" jobs is equal or if the difference in skill, effort and responsibility does not support the amount of the differential. A fair reading of Gunther and of the Court's refusal to review the favorable IUE v. Westinghouse decision,(2) a companion case which was pending when Gunther was being considered and was implicitly approved by the Court, is that the Supreme Court held that sex-based wage discrimination is no less illegal than wage discrimination based on race, national origin or religion.(3)

These Supreme Court decisions banning discrimination in compensation in no way require that the comparison be restricted to similar or comparable jobs. In IUE v. Westinghouse, the jobs being compared were not similar, e.g., female assembly line workers, inspectors and quality control workers were compared with male janitors, shipping clerks, manual laborers and other dissimilar jobs.

Although the Supreme Court in *Gunther* made clear that wage bias is illegal, it did not spell out the kind of evidence that must be presented in other cases.(4) The recent holding in *AFSCME v. State of Washington* showed in detail the kind of evidence that would generally result in a court finding of discrimination. The *AFSCME* case put meat on the *Gunther* skeleton. The evidence relied upon by the *AFSCME* court, which resulted in a finding that the evidence of discrimination in compensation was "overwhelming," is typical of the practices of virtually every employer, private and public, including the federal government. Such evidence included:

- Statistical evidence that there is a statistically significant inverse correlation between sex and salary. For every 1% increase in the female popoulation of a classification the monthly salary decreased by $4.51 for jobs that the employer evaluated to be worth the same. A 100% female job is paid, on average, $5,400 a year less than a 100% male job of equivalent value. The chances of such a relationship occurring by chance is less than 1 in 10,000.

- Deliberate occupational segregation on the basis of sex. The employer placed classified ads in the "male only" and "female only" columns until the newspapers stopped accepting such ads because it violated Title VII. The employer also used classification specifications which indicated a preference for male or female employees.

- Disparities in wages between closely related but segregated jobs such as Barber and Beautician, Institution Counselor and Classification Counselor, House Parent and Group Life Counselor, and Duplicating Service Supervisor and Data Processing Supervisor. The predominantly male jobs in each set were consistently paid more than the predominantly female jobs requiring similar duties.

- Disparities in salaries between predominantly male and predominantly female entry level jobs which require the same qualifications. Predominantly male entry level jobs requiring no high school were paid an average of 10% more than predominantly female entry level jobs requiring no high school. Predominantly male entry level jobs requiring a high school degree are paid an average of 22% more than predominantly female entry level jobs requiring high school. Predominantly male entry level jobs requiring one year of business school are paid an average of 19% more than predominantly female entry level jobs requiring one year of college. Predominantly male entry level jobs requiring two years of college are paid an average of 13% more than predominantly female entry level jobs.

- A series of job evaluation studies performed by the state which show a 20% disparity between predominantly male and predominantly female jobs which require an equivalent composite of skill, effort, responsibility and working conditions. The disparity increased by 1983. The state updated the studies but took no action to correct the discrimination. On the eve of trial, the state passed a bill calling for a 10 year phase-in of comparable worth. The judge did not make an independent determination of job worth.

- Admissions by top officials of discriminatory practices. Successive Governors admitted that the job evaluation studies performed by the state showed discrimination in compensation. Reports by the Personnel Boards, the Governor's Affirmative Action Committee and others documented discrimination in a variety of personnel practices.

- Discrimination in the administration of the state's compensation system. The Campus Police Assistant position, which had to be filled by a woman, was indexed to the clerical benchmark instead of the security benchmark, a male classification. Reclassification actions favored male employees over female employees.

Judge Tanner found on the basis of this and similar evidence that there was overwhelming evidence of "historical discrimination against women in employment in the State of Washington, and that discrimination has been, and is, manifested by direct, overt and institutionalized discrimination." He found the State had acted in bad faith and had violated Title VII by engaging in both disparate treatment (intentional discrimination) and disparate impact.

The consistent holding of these cases is that a pattern of disparities in wages between male and female jobs is highly persuasive evidence of discriminatory intent. A disparity between a single male and a single female job may on occasion be explained away for idiosyncratic reasons. But a consistent pattern of disparities is difficult to explain on any ground other than discrimination. By analogy, if Jack is selected instead of Jill for a promotion, in the absence of any circumstantial evidence of discrimination it is difficult to infer discriminatory intent. But if the Jims, Johns, Joes and Jacks are regularly selected instead of the Janes, Joans, Joanns and Jills, the inference of discrimination is unavoidable.

B. Occupational Segregation and Wage Discrimination go Hand-in-Glove

In the AFSCME case, the court relied heavily on the evidence showing that the State had deliberately segregated its work force, e.g., placing classified ads in the "male" or "female" column, job descriptions that limited a job to one sex; state "protective" laws which prohibited women from doing certain work; and references in employer records to "pigeonholing" female employees, to average earnings for "men's" and "women's" jobs, to polls of supervisory and other employees to ascertain their reaction to opening "male" jobs to female employees, etc.

There is a symbiotic relationship between occupational segregation and wage discrimination. More importantly, occupational segregation practiced by nearly all employers leads to and is evidence of wage discrimination.

The initial assignment and subsequent wage practices derive from a common set of biases about women and minority workers. The employer who assigns women, for example, only to assembly line jobs because it believes they are not suited for heavier jobs, also inevitably believes that the jobs performed by women are of less value than the "physical" jobs performed by men. Put another way, the same employer who believes that women should not be placed in jobs of importance and responsibility, because of the employer's conception of the role of women in our society or of the "innate" abilities of women, is almost certain to believe that the jobs women are permitted to perform have less value than the jobs performed by men. (e.g., zoo keepers who take care of animals typically are higher paid than female employees who engage in child care.) A prestigious study by the National Academy of Sciences and commissioned by EEOC concluded, "...the more an occupation is dominated by women the less it pays."(5)

Virtually every employer that hired women prior to the passage of the Civil Rights Act deliberately sex-segregated its work force, and paid its female employees a discriminatory wage.(6)

With few exceptions these employers are probably paying an illegal wage today, in violation of the Civil Rights Act and E.O. 11246.

The Supreme Court told us three decades ago that segregation and equality cannot coexist. In its landmark school segregation case, Brown v. Board of Education, a unanimous Court held that "(s)eparate educational facilities are inherently unequal," and that racially separate educational facilities result in inferior education because "separating the races is usually interpreted as denoting the inferiority of the Negro group.(7)

The Supreme Court's holding that segregation is "inherently unequal" applies with equal force to race and sex segregation in the work place, i.e., a racially or sexually separate job structure inherently results in inferior wages because such structure "denotes the inferiority of the (female) group."(8) When an employer has segregated the work force, wage discrimination invariably follows.

C. Failure to Pay Equal Pay for Equal Work is Only One Limited Form of Wage Discrimination

Although the Gunther case clearly held that Title VII was broader than the Equal Pay Act, some apologists for wage discrimination continue to profess commitment to the goal of qual pay for equal work but oppose efforts to eliminate other forms of wage discrimination. It is sheer hypocrisy to oppose one type of discrimination and support another. As the Supreme Court held in Gunther, the limitation of the Title VII to equal pay cases:

> "means that a woman who is discriminatorily underpaid could obtain no relief - no matter how egregious the discrimination might be - unless her employer also employed a man in an equal job in the same establishment, at a higher rate of pay. Thus, if an employer hired a woman for a unique position in the company and then admitted that her salary would have been higher had she been male, the woman would be unable to obtain legal redress under petitioner's interpretation. Similarly, if an employer used a transparently sex-biased system for wage determination, women holding jobs not equal to those held by men would be denied the right to prove that the system is a pretext for discrimination."

452 U.S. at 178-179.

The Equal Pay Act applies generally to cases where men and women are doing the same job and would not apply to segregated jobs. Those who argue that the law applies only to equal pay for equal work indirectly encourage employers to sex-segregate the work force, thereby permitting discrimination on the erroneous theory that neither the EPA not Title VII applies. *The most substantial component of the wage gap is attributable to discrimination in compensation for the work women now perform*.

Even opponents of the elimination of wage discrimination admit that one half of the total wage gap is attributable to discrimination. Dr. June O'Neill, a vigorous opponent of efforts to eliminate wage discrimination, testified on behalf of the unsuccessful Defendants in the *AFSCME* case. Dr. O'Neill testified that there is an approximate 40% wage gap between predominantly female jobs and predominantly male jobs. Approximately one-half of that disparity, according to Dr. O'Neill, can be attributed to non-discriminatory factors such as education, training, experience, etc. She admitted that *the other half of the wage gap cannot be explained by any factor other than sex*. Ironically, Dr. O'Neill's testimony is remarkably consistent with the wage gap identified in the State's job evaluation studies. Dr. O'Neill's testimony is also consistent with that of Dr. George Hildebrand, witness for Defendants, and Dr. F. Ray Marshall, former Secretary of Labor, witness for AFSCME.

D. "Comparable Worth" Is Not The Issue

Title VII prohibits discrimination in compensation. It does not refer anywhere to "comparable worth." "Comparable worth" and "pay equity" are popular terms, not legal ones. The Supreme Court in *Gunther* found that it was not necessary to consider "comparable worth" in order to resolve questions relating to sex-based wage discrimination. It is, therefore, clear that *all cases involving wage discrimination should be resolved by EEOC on the basis of the statute, with no reference to "comparable worth*."

The ultimate issue in a wage discrimination case is whether sex or race was a factor in wage setting. A comparison of the duties of different jobs with the same employer is, of course, relevant evidence of discrimination. In the absence of discrimination, one would expect jobs which require a greater composite of skill, effort, responsibility and working conditions to be paid more. See pp.27-29 *infra*. In Washington State, job evaluation studies found that there were two separate salary practice lines -- one male and one female; male jobs which required greater skill, effort and responsibility were paid more than other male jobs and female jobs that required greater skill, effort and responsibility were paid more than other female jobs -- but on a two track system. The simple establishment of a unirail wage system for all employees will end wage discrimination.

For purposes of Title VII, it really doesn't matter what a job is "worth," or what an employer chooses to pay. What does matter is that an employer may not discriminate against its female employees who perform work of equal skill, effort and responsibility by paying them less than it chooses to pay the occupants of traditional male jobs.

"Comparable worth" has become a red herring to obfuscate the real issue of discrimination and the clear holding of *Gunther*. To avoid the force of *Gunther*, EEOC appears to have labelled every wage discrimination case "comparable worth", and therefore outside the holding in *Gunther*. In fact, any wage discrimination case which is based in part on a comparison of job duties may be tried on the basis of disparate treatment or disparate impact, or both, depending upon the facts.

Sex bigots generally refuse to talk about discrimination. They prefer to use the "comparable worth" tag to create the erroneous impression that all employers would be required to pay the same wage rates and that this would bring about national wage controls. But the Title VII yardstick measures discrimination on the basis of how an employer treats its female and male employees. Any comparison of job duties or wage rates in support of a claim of wage discrimination must be based on a comparison of the wages an employer pays the occupants of its male and female jobs.

II. The Executive Branch Has Failed and Refused to Enforce the Civil Rights Law.

The Equal Employment Opportunity Commission, the Department of Justice and other executive agencies are obligated to enforce the law, not to substitute their political judgment or ideological philosophy for the decisions of Congress and the Supreme Court. A deliberate refusal to enforce the laws constitutes malfeasance in office and warrants appropriate action.

President Reagan did not nominate any EEOC Commissioners until after August, 1981. Until that time, EEOC had followed a consistent pattern, interpreting Title VII's prohibition against discrimination in compensation to incorporate more than the Equal Pay Act. A brief chronology makes this readily apparent:

1. Starting in 1966, EEOC issued Decisions (findings of "cause") applicable to both race and sex-based wage discrimination where jobs were different. EEOC made at least 10 "probable cause" findings in wage discrimination cases between 1966 and 1970, e.g., Planters Manufacturing Co. in 1966 (disparity between black foundry workers and white production workers.) The joint brief of EEOC and the Justice Department in the Westinghouse case points to this record with pride:

> ...the Commission issued a number of decisions which showed that it did not deem a finding of "equal work" necessary to state a claim of wage discrimination based on sex. Case No. 66-5762 (decided June 20, 1968), 1973 CCH EEOC Decisions subsection 6001, n.22; Decision No. 70-112 (September 5, 1969), 1973 CCH EEOC Decisions subsection 6108; Decision No. 71-2629 (June 25, 1971), 1973 CCH EEOC Decisions subsection 6300. In these cases the Commission found lower pay scales for jobs held predominantly by females in sex-segregated workforces to be discriminatory. Thus it has been the Commission's consistent position that the depression of wages for females in sex-segregated jobs because such jobs are occupied by females, constitutes a violation of Title VII (emphasis added).

2. Congress reaffirmed its intent to broadly prohibit discrimination in employment on the basis of sex and race in enacting the 1972 amendments to Title VII:

> Discrimination against women is no less serious than other forms of prohibited employment practices and is to be accorded the same degree of social concern given to any type of unlawful discrimination.

H.R.Rep. No. 92-238, 92d Cong., 1st Sess. 5(1971). See also S.Rep. No. 92-415, 92d Cong., 1st Sess. 7-8(1971).

3. Regulations issued by EEOC in 1972 were consistent with congressional intent to apply the same standards to sex-based wage discrimination claims as to race based wage discrimination claims unfettered by the equal work standard. 29 CFR 1604.8(a) provided that:

> The employee coverage of the prohibitions against discrimination based on sex contained in Title VII is coextensive with that of the other prohibitions contained in Title VII...

4. In 1979 and 1980 EEOC played a leading role in Gunther and IUE v. Westinghouse. After the district court initially dismissed the Westinghouse case, EEOC Chair Norton, to show the importance of this issue, assigned the then EEOC General Counsel, Issie Jenkins, to urge the district court to permit a special and expedited appeal to the Court of Appeals. Norton then requested Jenkins' successor, General Counsel Leroy Clark, to argue the case in the Court of Appeals. The Justice Department and EEOC played major roles in the both Court of Appeals and the Supreme Court in rebutting defenses made by employers -- defenses which were designed to permit the perpetuation of sex-based wage discrimination.(9)

5. Within two months after the Supreme Court issued Gunther, EEOC, in August 1981, had adopted a procedure to provide "Interim Guidance to Field Offices on Identifying and Processing Sex-based Wage Discrimination Charges under Title VII and the EPA." The stated purpose was to provide "interim guidance in processing...claims of sex-based wage discrimination in light of the recent Supreme Court decision in County of Washington v. Gunther.(10) The EEOC memorandum set forth comprehensive

procedures for "investigating" and "evaluating sex-based wage claims" and also provided that "counseling of potential charging parties should be expanded to reflect the scope of Gunther." The memorandum also states:

> ...Title VII is not limited by the equal work standard found in the Equal Pay Act.
>
> ...the decision brings sex-based wage discrimination claims into conformity...with the Commission's consistently held position in this regard when the charge is based on race or national origin.
>
> Gunther now makes it clear that Title VII is also applicable to sex-based wage claims other than those involving equal pay for equal work.
>
> The female telephone operator...could compare herself...to a male who works in an entirely different job classification (i.e., a male elevator operator).
>
> ...Title VII principles apply to the processing and investigating of wage discrimination charges regardless of whether they are based on national origin, race, sex, color, or religion.

It should be noted that this earlier Commission memorandum was addressed to the "Processing of Sex Based Wage Discrimination Charges" and does not refer to the processing of "comparable worth" charges.

President Reagan's appointees to EEOC lost no time in expressing their opposition to correcting sex-based wage discrimination.(11) Their strategy was simple: call everything "comparable worth" and claim that the Supreme Court did not approve a "comparable worth" theory in Gunther. See pp. 13-15 supra. It came as no surprise, therefore, that the Commission dragged its feet, failed to carry out its mandate to enforce the law's prohibition against wage discrimination and made clear to employers they had nothing to fear from the Commission.

Nevertheless, the Reagan Commission has renewed the guidance procedure each 90 days since its adoption. On the other hand, in our discussions with the Chairman and EEOC Commissioners, as well as the regional office staffs, it is clear that the procedure has been totally ignored; on several occasions, we have sent the procedures to EEOC staff because they were totally unaware of the procedure. Indeed, in 1982, at the time of the hearings before three subcommittees of the House Post Office and Civil Service Committee, the Commission was on the verge of formally adopting a new policy statement which did not even acknowledge the existence of the present procedural regulation and which would have required the dismissal without investigation of all pending sex-based wage discrimination charges.(12)

EEOC and Justice are actively seeking to raise from the dead legal issues that the Supreme Court put to rest in the Gunther case.(13) For example, in commenting upon the AFSCME v. Washington State case, one Justice Department official queried, "How do you compare the poet and the plumber?" (N.Y. Times January 22, 1984).(14)

In Gunther, the Supreme Court agreed with the position of EEOC and the Justice Department that Title VII was not limited to cases involving equal pay for equal work. The joint EEOC and Justice Department brief argued then that:

> "When Congress amended Title VII in 1972, it confirmed the intent of Title VII to broadly proscribe all forms of discrimination in compensation, against not merely those that are most blatant... The complaint alleged that women were paid less because they were women. That states a cause of action under Title VII."

Similarly, Assistant Attorney General for Civil Rights William Bradford Reynolds,(15) without having read the opinion, stated that, "If the women with low paying jobs had an equal opportunity to work at the jobs with higher salaries but never took the opportunity, *where's the discrimination* ?" (N.Y. Times, January 22, 1984). The best response for Mr. Reynolds is to be found in the Justice Department brief filed by his predecessor with the Supreme Court in *Gunther* :

> Petitioners suggest...that the purposes of Title VII will be satisfied if women are protected only against discrimination in transfers and promotions. But such opportunities may not always exist and some women, although qualified for the underpaid jobs that they presently hold, may not have the skills necessary to secure other employment. That women may theoretically be able to move to jobs in which sex-based compensation practices are not present is *irrelevant* inasmuch as (the Act) prohibits discrimination not only in promotions and transfers, but also in compensation.

Brief for the United States and the Equal Employment Opportunity Commission as amica curiae in *County of Washington v. Gunther* , at pp. 10-11, n.5. We assume that Mr. Reynolds was aware of *Gunther* and of the role his agency had played in that decision. In view of this direct and blatant contradiction of the former Solicitor General, Attorney General and EEOC General Counsel, serious questions can and should be raised with respect to this administration's commitment to enforcing existing civil rights laws.

EEOC Chair Clarence Thomas correctly analyzes AFSCME v. State of Washington as a "straight Gunther " case. "Who am I to challenge the Supreme Court?" Thomas has asked rhetorically.(16) While the Chair correctly recognized, unlike Mr. Reynolds, that he should not question the Supreme Court (and his Democratic and Republican predecessors at EEOC), he neglected to answer why did EEOC not investigated the duplicative charges filed against other states, counties, cities and school boards?"

Mr. Thomas expressed similar worthy sentiments in congressional testimony a year and a half ago. He agreed that comparable worth is an issue of discrimination(17) and testified that:

> The Commission does place high priority on comparable worth issues(18) ...The members of the Commission have shown no hesitancy to use class action litigation as an enforcement litigation."(19)
>
> ...You have my commitment that we will pursue very vigorously the inequities and discrimination in the federal work force.(20)

EEOC has taken no action on wage discrimination issues. EEOC has not brought a single wage discrimination case to trial since the Gunther decision was rendered three years ago, nor has it investigated and referred any public employment cases to the Justice Department.

Then on March 7, 1984 before the House Subcommittee on Manpower and Housing the Commission testified it had, within the last week, appointed a "working group" to study the issue and they expected to come up with a "comparable worth" guideline by May of 1984, a full 18 months after their initial promise to act.(21) Commissioner Clarence Thomas stated that all of the 266 cases had been reviewed "within the past 3 weeks" and it was determined none were Gunther-type cases.(22)

Indeed AFSCME alone has had at least half a dozen wage discrimination charges pending against public employers in the last three years, including the Washington State case which would have provided an occasion for Justice Department litigation.

The Department under the current administration is also retreating from prior government policy. Former Secretary Marshall recognized the need for vigorous public enforcement of civil rights laws on federal contract programs, as well as the need to support and complement private initiatives. Former Assistant Secretary of Labor would require equal compensation for women's and men's jobs whenever the jobs "which may be different in content...required the same skill, effort and responsibility." As stated by Elisburg, "The concept sounds so simple, one can only wonder what has taken it so long to catch hold."(23)

But here, too, the Reagan administration's Labor Department sold out the victims of sex-based wage discrimination. In 1978, the Department of Labor brought charges against Kerr Glass Manufacturing Corporation, based on the first Gunther-type complaint of sex-based wage bias filed by a federal agency. The complaint alleged that Kerr had skewed the evaluation of its male and female jobs in order to maintain sex discriminatory wage rates (e.g., under the Kerr plan maximum physical effort was allotted twice as many points as maximum mental effort.)

Despite a 122 day trial in 1979, Reagan's Department of Labor settled the case on August 13, 1982, by washing out the wage discrimination claims and all related back pay, and agreeing that the Department would not take any action based on the Kerr job evaluation plan (or changes made therein) until at least 1985.(24) Since most of the remedial aspects of the settlement focused on allowing women to compete for predominantly male jobs, it appears the administration is following the Justice Department line of telling women in underpaid jobs that they should simply "get a man's job," otherwise "where's the discrimination?"

EEOC, the Justice Department and OFCCP all have the authority to investigate and litigate suspected wage discrimination claims even without a charge by a union or employee. We know as a fact that the Westinghouse pay structure exists throughout that company and the rest of the electrical manufacturing industry. And we know as a fact that the practices of Washington State exist throughout public employment. Surely there is one case of wage discrimination which even this administration would consider a violation of Title VII.

III. Bigotry is Not Defensible .

Four basic excuses are used to deferred discriminatory wage practices: A) "apples and oranges"; b) "market"' c) "cost" and d) "blame the victim."

A. Apples and oranges is not a defense.

The apples and oranges argument is that it is not possible to evaluate dissimilar jobs. But this is exactly why job evaluation was developed. As stated by Arbitrator Bertram Gottlieb:

> From the very beginning job evaluation plans were developed for the purpose of devising a yardstick for measuring dissimilar jobs: For determini ng "How much one job is worth compared with other jobs" (Occupational Rating Plan of the Industrial Management Society, IMS, Chicago, 1937). If all jobs were similar there would have been no need for job evaluation plans.(25)

Virtually every large employer use some method to evaluate the internal relationship of different jobs, based on an objective evaluation of the composite of skill, effort, responsibility and working conditions required by the jobs.(26)

For more than 50 years, employers have been praising job evaluation. Employers themselves upheld the job evaluation concept when it was in their own interest, during passage of the Equal Pay Act (EPA).(27) Consistent with that legislative history, judges have been comparing "apples and oranges" under the EPA for 20 years. Frequently a judge must determine on the basis of job evaluation whether men's and women's jobs are "equal or substantially equal" within the meaning of the EPA. Thus in *Thompson v. Sawyer* , 678 F.2d 257 (DC Cir. 1982), a case involving the Government Printing Office, a legislative agency whose rates are set by the Joint Committee on Printing, the judge compared the female job of journey bindery worker with that of the male job of bookbinder, and found that the federal government was paying women a discriminatory wage.(28)

Male and female jobs can be compared without a formal job evaluation plan, e.g., male barbers v. female beauticians, male liquor store clerks v. female school teachers, male toll collectors v. female medical stenographers, male tree trimmers v. female nurses. Similarly, it does not take an expert evaluator to recognize that discrimination exists where the qualifications for entry level jobs are the same (e.g., high school graduation is the sole requirement), and the rates for the "female" jos are consistently 20% below the male jobs, as in the *AFSCME* case. See p.7 *supra* .(29)

B. *The market is not a defense*. The "market" argument is that wages are established by supply and demand, not discrimination. "We do not discriminate," employers protest. "We just pay the going rate." There are several fallacies in this argument.

First, the market itself is distorted by discrimination. Supply and demand does not work for traditionally female jobs. The well known and long-time shortage of nurses in this grossly underpaid profession vividly demonstrates that *supply and demand appear to havew little effect on the wages of female-dominated professions* .

Second, most wage discrimination in industrial employment is a product of "initial assignment discrimination," as it was in

IUE v. Westinghouse and *AFSCME v. State of Washington* . Initial assignment discrimination occurs when entry level unskilled applicants or applicants with equal skills are assigned to different jobs on the basis of sex, and female employees are paid less.

Third, the courts have consistently refused to sanction "law-breaking" because "others do it." The Supreme Court and lower courts have specifically rejected the market defense. Although *Corning Glass*(30) involved the Equal Pay Act, the Supreme court's comment is equally applicable to broader claims of wage bias:

> The differential... @3U reflected a job market in which Corning could pay women less than men for the same work. *That the company took advantage of such a situation may be understandable as a matter of economics, but its differential nevertheless became illegal once Congress enacted into law the principle of equal pay for equal work* .
>
> The whole purpose of the Act was to require that these depressed wages be raised, in part *as a matter of simple justice to the employees themselves* , but also as a matter of market economics, since Congress recognized as well that discrimination in wages on the basis of sex 'constitutes an unfair method of competition'." (At 205,207, emphasis added)

In *Norris v. Arizona Governing Committee* , 671 F.2d 330 (9th Cir. 1982), at 335, affd in part, rev'd in part 51 U.S. Law Week 5243(1983), the Court states:

> Title VII has never been construed to allow an employer to maintain a discriminatory practice merely because it reflects the market place.

Our society has advanced to the point where only a bigot would publicly state that because of the "market" Blacks and Hispanics should be hired for less money, or that because of the tragic unemployment rate of black workers they should be hired for less money.

> The Civil Rights Act was designed to eliminate discrimination. "Following the market" is designed to perpetuate discrimination.

C. *Cost is not a defense* . The "cost" argument asserts that we must perpetuate wage discrimination because the "cost" of correcting it would destroy the economy. Congress did not place a price tag on the cost of correcting discrimination.

In Los Angeles Department of Water and Power v. Manhart, 435 U.S. 702(1978), the Supreme court stated:

> In essence the Department is arguing that the prima facie showing of discrimination based on evidence of different contributions for the respective sexes is rebutted by its demonstration that there is a like difference in the cost of providing benefits for the respective classes. That argument might prevail if Title VIL contained a cost-justification defense comparable to the affirmative defense in a price discrimination suit. But neither Congress nor the courts have recognized such a defense under Title VII." 435 U.S. 702, 716-717(1978)(Emphasis added)

As Judge Tanner commented in AFSCME v. State of Washington, "Defendants" preoccupation with its budget constraints pales when compared with the invidiousnes of the ongoing discrimination..." 33 FEP Cases 824.

D. The victims are not to blame.

As discussed, supra, the Reagan administration attempts to blame the victims by suggesting that the "cure" for sex-based wage discrimination is for women to change jobs. Again, only a bigot would tell black workers who are receiving a discriminatory wage rate that if they don't like it, they should get a higher-paid job. As Judge Tanner eloquently commented in the AFSCME v. State of Washington case

> ...this court can see no realistic distinction between discrimination on the basis of race or sex. The results are just as invidious and devastating. There is nothing in Title VII that distinguished between race and sex in the employment discrimination context.

33 FEP Cases 825 n.22.

The suggestion to "change jobs" is another one of this Administration's "blame the victim" tactics. Reagan officials have already blamed the hungry for "voluntarily" going to soup kitchens and blamed the unemployed for being without a job when they could "read the classifieds." Telling women whose jobs are illegally underpaid that they can work elsewhere is like telling a mugging victim to move to another neighborhood.

Michael Horowitz, counsel to the director of the Office of Management and Budget, apparently believes that "comparable worth" would help middle calss white women at the expense of blacks. (N.Y. Times, Jan. 22, 1984). The OMB official ignores the fact that black women will be a major beneficiary of the eradication of sex-based wage discrimination. Significantly, however, OMB appears to assume that the victims, rather than the lawbreakers, should make restitution and that relief can be obtained only at the expense of the victims of discrimination.

IV. Recommendations

AFSCME commends Congresswoman Oakar for her commitment to pay equity and her leadership in initiating pay equity legislation.

H.R. 4599, the Federal Employees Pay Equity Act of 1984 is a first step toward eliminating wage discrimination in the Federal workforce. The federal government is a major employer in the United States. Many federal employees work in predominately female jobs.

As an employer, the Federal government should be concerned about discriminatory wage rates. H.R. 4599 provides the vehicle for removing discrimination within the federal government and sets an example for the rest of government and private industry.

HR. 5092, The Pay Equity Act of 1984 promotes pay equity in the private sector and provides vigorous oversight of the Federal agencies charged with enforcing the laws against sex-based wage discrimination. We applaud this bill for requiring detailed reporting requirements by the EEOC. As stated earlier, the EEOC under the Reagan Administration has promsied much but delivered nothing on pay equity. EEOC and Justice have a legal duty to enforce the law as interpreted by the Supreme Court.

Conclusion

Existing laws - Title VII and Executive Order 11246 - prohibit discrimination in compensation. Advocates of equal pay for work of equal value have won significant legal battles in the courts - and we need to act. Now is the time for pay equity.

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(1) County of Washigton v. Gunther, 101 S.CT. 2242 (1981).
(2) 631 F.2d 1094 (3d Cir. 1980), cert.den., 452 U.S. 967 (1981)
(3) "(The Supreme) Court...refer(s) to discrimination on the basis of race, religion, sex or national origin as they are equally nefarious and equally prohibited." IUE v. Westinghouse, 631 F.2d 1094, 1100 (3d Cir. 1980), cert.den. 452 U.S. 967. See also Los Angeles Department of Water & Power v. Manhart, 435 U.S. 702, 709 (1978); Dothard v. Rawlinson, 433 U.S. 321, 329 (1977); AFSCME v. State of Washington, 33 FEP Cases 808 at 825 n.22 (W.D.Wash. 1983).

(4) This is standard practice for the Court, which usually restricts its rulings to the facts of a particular case.

(5) Treiman and Hartman, Women, Work and Wages: Equal Pay for Jobs of Equal Value, National Academy of Sciences, National Academy Press (Wash. D.C. 1981) at 28.
(6) The various State "protective laws" required some degree of segregation; those laws did not, however, require paying women a discriminatory wage. Although most of these laws have been superseded by Title VII and are no longer in effect, the continuing effects of such discrimination constitute evidence of discrimination today.
(7) 347 U.S.483, 494, 495 (1954).

(8) For a more complete discussion of this issue, see "Separate But Equal" - Job Segregation and Pay Equity in the Wake of Gunther, Newman and Vonhof, University of Illinois Law Review, November, 1981.

(9) Shortly after the Gunther decision was rendered, the National Academy of Sciences published a study earlier commissioned by EEOC on wage discrimination and job evaluation. The study concluded that "...jobs held mainly by women and minorities are paid less because they are held mainly by women and minorities." The study concluded that, "In our judgment job evaluation plans provide measures of job worth that...may be used to discover and reduce wage discrimination..." Treiman & Hartman, Women, Work & Wages: Equal Pay for Jobs of Equal Value, National Academy of Sciences, National Academy Press (Wash.D.C. 1981) at 93, 95.
(10) The memorandum of August 25, 1981, was unanimously adopted by the Commission which they included: J. Clay Smith, Acting Chair; Daniel E. Leach, Vice Chair and Armando M. Rodriguez.

(11) The first Reagan-appointed EEOC General Counsel Michael Connolly announced that he believes in the "market" concept and that he would not bring "comparable worth" lawsuits because the remedy would result in "severe economic hardship" for the discriminators. The present Chair and Vice Chair of the Commission expressed similar unfavorable views and indicated their lack of support for "comparable worth."

(12) After being criticized at the hearings, the new policy was not adopted. See testimony of Newman, Pay Equity: Equal Pay for Work of Comparable Value, Joint Hearings Before the Subcommittees on Human Resources, Civil Service & Compensation & Employee Benefits of the Committee on Post Office & Civil Service, House of Reprsentatives, 97th Cong., 2d Sess., September 16, 21, 30 and December 2, 1982, Part I, hereinafter "hearings."

(13) A favorite technique is to cite cases decided before the Supreme Court's decision in Gunther. Citing pre- Gunther cases is like citing Plessy v. Ferguson, 163 U.S. 537(1895) after Brown v. Board of Education, subsection 47 U.S. 483(1954) (Separate but equal is inherently unequal). Pre- Gunther cases are only instructive insofar as they are consistent with Gunther. Even before Gunther, there were successful wage discrimination claims, see, e.g., Kyriazi v. Western Electric, 461 F.Supp. 894(DNJ 1978); Laffey v. Northwest Airlines, 567 F.2d 429(D.C.Cir. 1976) and 642 F.2d 578(D.C.Cir. 1980).

(14) As discussed at pp. 13-15 supra, proof of wage discrimination claims involves comparison of male and female jobs with the same employer only. We know of few employers who employ both poets and plumbers.

(15) Mr. Reynolds also stated that, "I have absolutely no doubt his decision is wrong." (N.Y. Times, Jan. 22, 1984) The transcript of the trial is not even available yet and Mr. Reynolds made this statement without review of any part of the record. Reynolds has admitted he was accurately quoted.

(16) 1984 Daily Labor Report, 25, AA:7.

(17) Hearings at 401.

(18) Hearings at 377.
(19) Hearings at 402.
(20) Id ., p. 403.

(21) Statement of Clarence Thomas in response to a question by Representative Barney Frank regarding the EEOC's activities on pay equity cases.

(22) The EEOC statistics underestimate the number of charges pending. We understand that the estimate does not include AFSCME charges against Connecticut, Hawaii, Wisconsin, Los Angeles, Philadelphia, Chicago, University of California and New York City.

(23) Daily Labor Report, No. 230, November 29, 1978.

(24) Decree, Case No. 77-OFCCP-4, U.S. Department of Labor (August 13, 1982) at 3,5,6,12.

(25) Testimony of Mr. Gottlieb, who specializes in job evaluation cases, before Carol Bellamy and Andrew Stein, President of the New York City Council and Borough of Manhattan, respectively, on February 7, 1984.

(26) "Almost two-thirds of the adult population in the USA are pay-graded by job evaluation schemes." Job Evaluation , Patterson, Thomas T. (London Business Books) (1972) at p.xi; Paul Katz, "Comparable Worth", Federal Service Labor Relations Review, Spring, 1982, 38,39.

(27) In Corning Glass Works v. Brennan , 417 U.S. 188(1974), the Court held that the fourth affirmative defense in the Equal Pay Act ("any other factor other than sex") had been added to protect bona fide non-discriminatory job evaluations. See discussion of legislative history in Newman and Vonhof, "Separate but Equal - Job Segregatrion and Pay Equity in the Wake of Gunther," 2 Univ. of Illinois Law Review (1981)

(28) See Laffey v. Northwest Airlines , 567 F.2d 429 (D.C. Cir. 1976), cert.den. 434 U.S. 1086(1978), vacating and remanding in part, affirming in part, 366 F.Sup. 763 (D.D.C. 1973) and 374 F.Supp. 1382 (D.D.C. 1974). See also Hodgson v. Brookhaven General Hospital , 436 F.2d 719 (5th Cir. 1970). ("Nurses" and "Orderlies").

(29) A formal job evaluation may be required in orde to structure an appropriate remedy, but not to determine liability. Many kinds of cases -- antitrust, school desegregarion, etc. -- require technical support at the remedy stage.

STATEMENT OF RITA WALLACE, EXECUTIVE VICE PRESIDENT, NASSAU LOCAL CIVIL SERVICE EMPLOYEES ASSOCIATION, AFSCME LOCAL 1000

Ms. **Wallace.** Good morning. My name is Rita Wallace. I am the executive vice president of Nassau Local Civil Service Employees Association, AFSCME Local 1000.

I have been a registered nurse for 40 years. I graduated from St. Vincent's Medical Center in New York City in 1943. I worked as a nurse for 12 years in the Bronx Veteran's Administration Hospital, and for 11 years at Columbia Presbyterian Hospital.

In 1968 I was hired by Nassau County, New York City, as a head nurse in the intensive care unit at the A. Holly Patterson Home.

In 1979 I was elected executive vice president of local 830, and since then I have worked for the union on relief time from the nursing home.

Nassau Local 830 represents 21,000 employees of Nassau County government. This includes office, hospital, prison, and social service employees. More than half of Nassau County employees are women.

The members of my union believe we are the victims of wage discrimination by Nassau County. Although unequal pay for women has been woven into the fabric of our economy for many decades, the improverishment of women workers is a consequence we can no longer tolerate.

Title VII of the Civil Rights Act requires that no employer may discriminate on the basis of sex, even when the jobs are entirely different. My union demands fairness under the law. We demand equal pay for work of equal value.

In May and November of 1983 my local filed EEOC charges against Nassau County. We charged that county jobs are sex segregated, and that the county systematically pays women's jobs less than men's jobs, which require the same skills, effort, and responsibility.

We also asked Nassau County to conduct a job evaluation study, and make the appropriate changes in the pay scale as required by title VII.

The EEOC took no action on our charges, and Nassau County refused to do a job evaluation survey. AFSCME did its own study of county jobs using the county's pay records. Our results were startling. They confirmed our worst fears.

First, most county jobs are sex segregated into female jobs or male jobs. Of the 671 job classifications in Nassau County over two-thirds; that is, 450 of the jobs are filled exclusively by males, or exclusively by females.

Second, women's jobs are at the bottom of the pay scale. Although only half of the county employees are women, women make up 90 percent of the employees in the three lowest pay scales. These jobs, and these grades, are domestic workers, food service workers, nurse's aides, clerk, and clerical assistants.

Third, our survey showed that women's jobs are undervalued. This means that even though the skill, effort, and responsibility required by a female job is the same or greater than the skill effort and responsibility required by a male job, the women are paid less.

For example, in Nassau County a registered nurse must have a degree from a school of nursing, and must pass the State licensing exam. She must know anatomy and physiology, dietetics. She must maintain hospital records, and reports. She supervises subordinate employees. She administers narcotics and drugs. She is constantly involved in stressful situations, and must have good judgment in life and death situtations. A registered nurse is graded at 11, and had a starting salary of $17,000 a year.

In contrast, a correctional officer, a male job in Nassau County, requires graduation from high school and no other experience. The correction officer is under close supervision, and requires little independent judgment. The bulk of the job consists of standing guard, and escorting inmates to and from meals, bathing, and recreation. In Nassau County a beginning correction officer is graded at 13. Two steps higher than that of the registered nurse, and has a starting salary of $22,000 a year.

I will give you another example. A clerk/stenographer, a female job, requiring graduation from high school, supplementary courses in stenography and typing, 1 year of experience and passing a preemployment test. The clerk/stenographer must know grammar, spelling, arithmetic, and how to operate various office machines. Her duties include dictation, typing, answering correspondence, proofreading, maintaining records and financial accounts, and operating computers. The clerk/stenographer is a grade 4, starting at $12,000 a year.

On the other hand, a laborer, a male's job, requiring no formal education, experience, or testing. His only requirement is that he is in good health, can follow directions, and can handle simple tools. His job consists of sweeping, mowing the lawn, shoveling snow, digging and loading equipment. A laborer works under close supervision at all times, and the job requires limited judgment. The laborer is graded at grade 5, and starts at $13,000 a year.

My union believes that the inequities here are obvious. It doesn't take fancy scientific techniques to figure out that the county is paying women unfairly. Yet, the EEOC has refused to act on our charges. The law is clear. And so is the responsibility of the EEOC to enforce the law. Your bill, Congresswoman Oakar, focuses national attention on pay equity, and the need for vigorous Federal enforcement of the law.

For myself, and for members of local 830 in Nassau County, thank you for allowing me to appear before you today. I will be happy to answer any questions that you may have.

Ms. OAKAR. Well, thank you very much.

Let me ask some questions, and either of you can respond. Your union has been vigorous, probably one of the more vigorous unions to support women's efforts in the area of pay equity. But all don't belong to unions for better or worse. I think it's worse myself, but anyway, they don't belong to unions, and they don't have the resources to go to the Supreme Court, as the woman had to do with respect to inequities toward private pension laws.

What do you say to those women that don't have an organization such as yours supporting them in their efforts? Should they be left to the whim of the EEOC, or this administration? How do you reconcile all those women out there that aren't being protected?

Ms. ROCK. If employers knew that the Federal Government would vigorously enforce the laws you'd see the practices—the employment practices change. It's like any other law that's violated, if people don't hear that the law will be enforced they violate the law if it's convenient, and it certainly is convenient and financially lucrative to violate the law relating to pay equity.

And in short of vigorous Federal enforcement, those women who aren't under collective bargaining agreements have no hope for their situation changing.

Ms. OAKAR. Well, let me raise your point about EEOC, and the 266 pending charges in EEOC. And we'll ask this question of Mr. Thomas.

But they claim that there's not one charge that can be classified as a *Gunther* type charge. You don't agree with this.

Can you tell the subcommittee what charges AFSCME has filed with EEOC that are *Gunther* type? If you have a lot of them, you can submit it for the record.

Ms. ROCK. We would be glad to submit it for the record. It would help us in submitting it for the record if we understood clearly what EEOC meant by a *Gunther* type case, because I think we have several charges that are clearly comparable worth charges, and how narrowly they choose to define *Gunther* might affect what charges we felt—fit their definition. We will submit some that fit our definition, and some that fit theirs when we know what their definition of it is.

Ms. OAKAR. Well, then, I guess the appropriate question is to ask the definition, isn't it?

Ms. ROCK. Yes.

Ms. OAKAR. For the record.

Ms. WALLACE. Ms. Oakar, may I interject for a moment?

Ms. OAKAR. Yes, sure.

Ms. WALLACE. We have one classic case that was filed with EEOC. A gentleman who filed the claim—because we believe that this issue is just not a woman's issue, it is a worker's issue.

Ms. OAKAR. Right.

Ms. WALLACE. And as a male social service worker, he filed a claim stating that because he was found to be in a female dominated category that he was paid less salary. He chose to take a promotional exam, the same knowledge, skill, effort, responsibility, and became a probation officer.

Just by moving from a female dominated position to a male dominated position as a probation officer, with no change in any other educational experience, he acquired a $6,000 increase in salary. And you tell me that EEOC can't pick on that and focus in on the pay inequity, then I say that complaint is there to be found, and should be heard.

Ms. OAKAR. Well, we know—we gave examples yesterday where child care workers were paid less than those who take care of dogs because one is female dominated, and one is male dominated. We suspect there is a question as to where society's priorities are placed.

We've heard rumors that the Justice Department is thinking of intervening in the State of Washington case. If they would do that what would be your reaction, Diana?

Ms. **Rock**. It would be unfortunate because it sends a signal to employers that if they dig in a little while longer maybe this thing can be stretched out through the appeals process to last longer. Their intervention would not change the facts, and we feel the facts were so persuasive in this instance that it wouldn't change the net result at the appeals court level, or in the Supreme Court.

But it certainly is a signal to employers that they needn't worry about voluntary compliance as long as they have the Justice Department willing to weigh in against a Federal court decision on the question.

Ms. **Oakar**. So you're thinking that rather than being advocates, they're actually trying to be some form of a stumbling block in the enforcement?

Ms. **Rock**. Definitely.

Ms. **Oakar**. Thank you both very, very much.

Ms. **Rock**. Thank you, again, for your leadership.

Ms. **Oakar**. Our next witness is the Honorable Clarence Thomas, Chairman of the Equal Employment Opportunity Commission. Mr. Thomas had been before the subcommittee several years ago. And we are very happy that you were able to come today, Mr. Chairman. You may proceed in whatever way is most comfortable for you.

And if you are accompanied by anyone, perhaps they would like to give their names for the record.

Ms. **Duncan**. My name is Allyson Duncan. I am a member of the Chairman's staff.

Ms. **Thornton**. My name is Elizabeth Thornton, and I am Director of Coordination and Guidance Services in the Office of Legal Counsel.

Ms. **Oakar**. Mr. Thomas, you may proceed in whatever way you would like.

STATEMENT OF CLARENCE THOMAS, CHAIRMAN, EQUAL OPPORTUNITY COMMISSION, ACCOMPANIED BY ALLYSON DUNCAN, OFFICE OF THE CHAIRMAN; AND ELIZABETH THORNTON, OFFICE OF LEGAL COUNSEL

Mr. **Thomas**. Thank you, Madam Chair.

Good morning, Madam Chair, and members of the subcommittee. I appreciate the opportunity to appear before you to discuss H.R. 5092.

Let me emphasize at the outset that EEOC has and will continue to vigorously enforce laws which prohibit wage discrimination based on sex, race, religion, or national origin.

Theories of wage discrimination are constantly evolving. And the Commission has played an active and significant role in shaping the evolving law in this area. Long before the Supreme Court's decision in *County of Washington* v. *Gunther*, the Commission in a number of its decisions had expressed the view that a sex-based wage claim under title VII need not be based on a claim of equal pay for equal work.

In 1972, the Commission issued sex discrimination guidelines which clearly stated that the Bennett amendment incorporated into title VII only the four affirmative defenses of the Equal Pay Act.

The Commission also vigorously sought to establish good case law on this issue. The Commission brought suit against Marathon Electric Manufacturing Corp., and intervened in the *IUE* vs. *Westinghouse* suit before the district court of the northern district of West Virginia.

In both cases, the Commission challenged the employers' practice of intentionally setting the wages of females, but not the wages of males, below the employers' own determination of the value of certain jobs. Both of these cases were successfully settled.

The Commission also argued its position in the Third Circuit Court of Appeals as amicus curiae in *IUE* vs. *Westinghouse* and to the Supreme Court in *Gunther.*

Gunther ended the long debate concerning the extent to which title VII and the Equal Pay Act should be read together by holding that title VII incorporated only the four affirmative defenses of the Equal Pay Act, and was not limited by the equal pay for equal work standard.

Therefore, a sex-based wage claim could be brought under title VII even though it did not allege that men and women were performing substantially equal work.

Due in part to the earlier efforts by the Commission in laying the groundwork and asserting its position in the area of international sex-based wage discrimination, plaintiffs have been able to successfully argue their wage claims in such cases as *Gunther, Wilkins* v. *University of Houston, Taylor* vs. *Charley Brothers,* and more recently *AFSCME* vs. *State of Washington.*

While the Court in *Gunther* recognized that the parameters of title VII were broader than the Equal Pay Act, the decision made clear that the court was not considering a claim "based on the controversial concept of comparable worth."

The statement of purpose in H.R. 5092 indicates that provisions of Federal law currently exist "which declare that equal pay should be provided for work of equal value." To the extent that equal value includes the concept of comparable worth, it cannot be stated with certainty that such a statutory mandate presently exists. Indeed, that question was specifically reserved by the Supreme Court in *Gunther.*

Our primary difficulty in commenting on H.R. 5092 stems from the ambiguity in the provision of equal pay for work of equal value. Does work of equal value in this context mean jobs involving equal skill, effort, and responsibility?

If so, the Commission has been discharging its mandate in this respect since assuming jurisdiction over the Equal Pay Act in 1979. On the other hand, does work of equal value include jobs claimed to be of comparable worth? If so, it would be helpful if this were made clear.

For the purposes of this testimony, we are assuming that equal pay for work of equal value is a narrow concept within the wage discrimination area which encompasses the concept of comparable worth.

If that is the case, and assuming that the purpose of H.R. 5092 is to address comparable worth, then the reporting requirements in this bill are designed to generate data which exceed what would be necessary and would be extremely costly to implement.

Ms. OAKAR. What would the cost of this bill be?

Mr. THOMAS. We have not broken it out in dollars. But it would require us to divert significant numbers of our staff, from the enforcement functions to the reporting functions.

Ms. OAKAR. Do you think that it would be hard for you to prepare a report on how you have reacted to the cases that you have?

Mr. THOMAS. We receive over 10,000 wage based——

Ms. OAKAR. And you cannot give the Congress some kind of an idea of the status of sex-based wage cases?

Mr. THOMAS. We would have to, under this bill, do much more than that.

Ms. OAKAR. That is right. So you saying that it would mean more staff for you, is that the cost?

Mr. THOMAS. It would mean more reporting to us. And assuming that our resources remain at a constant level, it would require a diversion of our current staff to a reporting function as opposed to an enforcement function.

Ms. OAKAR. Well, what if Congress took the small percentage of the cost overrun on the helicopter project, and gave you a few more people, do you think that you could do the job of reporting to the Congress?

Mr. THOMAS. I am not familiar with the program.

Ms. OAKAR. You do not feel any obligation to report to Congress or the President of the United States?

Mr. THOMAS. We report to Congress and to the President of the United States in numerous reports now in addition to an annual report.

Ms. OAKAR. Do you feel an obligation to educate those firms? Another part of the bill asks that you institute an education process to help those companies who are acting in good faith, who want to change some of the pay structures.

You do not think that you could handle that, is that the problem?

Mr. THOMAS. We are currently doing that. We are required to do that under title VII now. We are doing that. And in fact, we were criticized by the civil rights community for diverting resources from enforcement to the educational function.

Ms. OAKAR. You are currently doing that. We would be happy to know how much you think in staff it would cost you to enforce this proposal that we have. We thought that it was a very modest proposal. We are not asking for any change of the existing law. We are just making sure that occasionally you become advocates for enforcement of the law.

Mr. THOMAS. Well, this bill, from our standpoint, requires us not to be advocates, but rather to be reporters. I have no problems with reporting to Congress. We do it currently in the agency. And one of our initial projects when I went to EEOC was to make sure that the reports were done on time. And they are now.

However, we are talking here about 10,000 cases per year, most of which do not involve issues raised either by *Gunther* or in the area of comparable worth.

Ms. OAKAR. You do not think that OMB would give you the additional resources to fulfill the mandate in this proposal?

Mr. THOMAS. I think that ultimately OMB does not give us resources. We get it from Capitol Hill. And in fact, OMB has been willing in the past years to give us more than Capitol Hill has given us.

Ms. OAKAR. So they have added to your staff, is that what you are saying?

Mr. THOMAS. No, OMB——

Ms. OAKAR. They have proposed added staff people?

Mr. THOMAS. No, OMB has given us——

Ms. OAKAR. You are really going to tell me. This committee is very knowledgeable about where the Federal employees are and where the RIF's have taken place.

Are you telling this committee that OMB has proposed that you get more help, not less?

Mr. THOMAS. The budget that I have submitted in each year that I have been at EEOC has been more than has been passed on the Hill. That budget was cleared by OMB.

Ms. OAKAR. I think that it would be interesting for you to submit for the record, if not today, then later, what you think the cost of this bill is. You made a generalized statement about additional resources. We did not think that it would cost the Government anymore to become advocates, or that the cost was not going to be a factor.

So if you think that there is going to be a cost involved, we would like to know what that is. Please proceed.

Mr. THOMAS. H.R. 5092 would require the Commission to report on all charges that contain an allegation of unlawful discrimination with respect to wages or to other forms of compensation on the basis of sex, race, color, religion, or national origin.

In other words, the Commission would be required to report extensively on all wage claims filed under title VII and the Equal Pay Act, not only on claims alleging unequal pay for work of equal or comparable value.

Wage claims under the Equal Pay Act or title VII involving either substantially equal work or intentional discrimination are filed far more frequently than comparable worth claims.

The Commission receives approximately 10,000 wage charges annually. H.R. 5092 would require the Commission to generate a number of different reports on these charges which would be extremely resource and labor intensive.

For example, section (C)(4) of H.R. 5092 directs the Commission to write a brief description of the allegations contained in all wage discrimination charges. To accomplish this for 10,000 different charges is virtually impossible.

If the intent of H.R. 5092 is to identify Commission activity in the area of equal pay for work of equal or comparable value, the extension of these costly reporting requirements to all types of wage charges would be of little value.

Section 3(A)(1) of H.R. 5092 proposes that EEOC conduct and promote research in the area of wage discrimination. The Commission's Office of Program Research has recently initiated a research project which will attempt to estimate some of the costs of implementing comparable worth in the public sector, and to translate these costs into estimates of the effect on employment levels.

The Commission has also formed a task force on sex-based wage discrimination which will among other things resolve the backlog of comparable worth charges currently in the EEOC inventory.

A more extensive research effort in the area of comparable worth would require a major shift in personnel and resources away from the charge processing, compliance, and litigation programs of the Commission.

Section 3(A)(3) of the bill proposes developing and implementing a program to provide appropriate technical assistance to any public or private entity requesting such assistance to eliminate discriminatory pay practices, and implement the principles of equal pay for jobs of equal value.

Acquiring such expertise and providing that type and level of assistance to any public or private entity requesting such assistance would be prohibitively expensive.

Although the Commission does provide advice through the Commission opinion letter and the voluntary assistance program, legislating a provision to provide a specific program or a specific service solely in this area is a unique concept which removes from the Commission its ability to effectively manage its resources.

H.R. 5092 would compel the Commission to funnel its resources into this one area to the possible detriment of other Commission programs, and leaves the Commission vulnerable to unlimited requests for specific technical assistance.

Section 3(D)(1) (A) and (B) state that the Commission shall conduct a study, in consultation with organizations representing Federal employees, of the procedures established by the Office of Personnel Management to establish classifications of positions in the competitive service, and the actual practice of the director and heads of other Federal agencies under such procedures.

The EEOC presently has only limited expertise in the are of position classification in the Federal competitive service. It should be noted that OPM has already begun a review of the Federal job evaluation system.

That concludes my statement. And I will be happy to answer any questions that you may have.

Ms. OAKAR. Thank you very much, Mr. Thomas.

Mr. Thomas, I think that it has become more clear than before—because of your testimony actually—that rather than dealing with sex-based discrimination, you are trying to create phantoms to justify your inactivity.

Rather than debating terms and counting costs, the Chair feels that you ought to be processing charges and litigating cases. And when it comes to inequality and costs, the cost that is really of great concern to the Chair is the insensitivity and inaction to the working women in this country and the inactivity of EEOC.

The record of EEOC in this area has been really shameful in my judgment. Instead of trying to fight the law and try to get into what the terms are and so on, why do you not become vigorous about what you are supposed to be doing as director of this very important department.

When are you going to start really doing your job?

Mr. **Thomas**. Madame Chair, first of all, since I have been at EEOC, I think that I can say that we have spent an enormous amount of time making the agency more effective than it has been in the past.

Ms. **Oakar**. Effective for whom?

Mr. **Thomas**. For everyone. We not only have sex discrimination, we have race discrimination, national origin discrimination, age discrimination, and handicapped discrimination. We are not, at that agency, at liberty to put one group above another. We have to take them as they come.

Now in litigation, over 40 percent of our cases involve sex discrimination. Over 50 percent of our charges involve some allegation of sex discrimination. We have a very active litigation program, particularly under the Equal Pay Act.

We do not receive large numbers of the comparable worth type cases. The cases that we receive are strictly within current case law. And we deal with those very rapidly.

The small number that we have accumulated over the past several years of 200 plus cases of over 50,000 to 60,000 cases involving sex-based wage discrimination are the most difficult cases. Those are the ones that do not fit within the *Gunther* case law, and do not fit within the case law that has been currently developed at the district or circuit court level.

Ms. **Oakar**. Let me ask you. When you appeared here 2 years ago before Congresswomen Schroeder and Ferraro and myself was really hopeful.

You stated in your testimony in the fall of 1982 that comparable worth—which you are questioning today as being part of the law or not—was, to use your own word, a priority. You stated that EEOC was really going to be vigorous, and you were in the process of looking through the cases for an appropriate litigation vehicle.

Today, 18 months later, you still have not processed a charge. And the issue of sex-based wage discrimination or, to use your word comparable worth, is before a work group.

I do not consider this to be the record of someone who views sex-based wage discrimination charges as a priority. In fact, you are treating this important issue more as something to be ignored and studied to death than to be acted upon.

And people out there, Mr. Thomas, do not feel that they can wait. You know, the average black woman gets 55 cents for every dollar a man makes. She is the absolute black-bottom poorest person in the country, particularly when she gets older than when she is younger. And white women do not do too much better. They get 61 cents for every dollar, which is less than they got in 1939 when they were getting 63.6 cents for every dollar.

You are the one who has the power to be the chief advocate for what the law states today.

Why are you not instituting cases to begin and to further define and clarify the laws as the EEOC did in the past?

Mr. **Thomas**. Madam Chairman, I have a responsibility—first of all, let's go back historically a bit. You refer to black women. I do not have to be lectured or told anything about the income of black women. My mother was a domestic making about $20 every two weeks working for a white nurse. I do not think that it is appropriate to lecture me.

Ms. OAKAR. I do not think that I was lecturing you. I was stating a fact about black women and white women. If you want to take it that way, then that is fine.

Mr. THOMAS. Well——

Ms. OAKAR. I do not think that I was lecturing you.

Mr. THOMAS. With respect to this agency, what we have attempted to do in areas, particularly those areas where there is controversy; where there is unsettled case law; where the case law is against the agency; or the courts have not dealt with the issues, we have been particularly careful to make sure that we do not lose more than we gain.

I have relied on the staff at the EEOC that I inherited. We did not bring in a group of political activists from the Republican Party to work on these issues. These are the same career people. Six of the top people at the EEOC are women. The people who head up this entire area, both enforcement and the legal counsel's shop, are all women.

I do not believe that they are insensitive to this issue. The problem is——

Ms. OAKAR. You set the tone, and this administration sets the tone as to what they are going to be doing with their time and what the philosophy will be. Now you told this committee that this was a priority with you 2 years ago—almost 2 years ago.

What have you done about it?

Mr. THOMAS. At that time——

Ms. OAKAR. Are you forced not to do it, is someone telling you from on high to take it easy on this issue?

Mr. THOMAS. At the time that I appeared before this committee, we had what we felt in the private sector—and we have to look primarily at the private sector, because our litigation authority does not extend to the public sector—and we would prefer to litigate our own cases where we have much, much more success—we thought that we had at that time a great case.

After investigating, which took quite a bit of time, the case just simply fell apart. We still have the case in-house, but it simply did not develop the way that I thought it would. And I was very optimistic at that time.

At the same time, we had to develop our own internal policies, not only on the issue of wage discrimination or sex discrimination across the board, but on just making Gunther a part of our daily operations.

Although I found myself repeatedly signing off on a 90-day notice, we had to develop a compliance manual section which I made top priority, so that our field people would know how to handle these cases.

In addition, we had to develop additional in-house guidance on the issue. We have done all of those things now. Wage discrimination, sex-based wage discrimination, has been a priority at the Commission. I have pushed it.

The only cases that have not moved, and those are the cases for which I will personally have to accept responsibility, are those 250-

plus cases which have not fallen within the Gunther framework or the existing law on sex-based wage discrimination.

Ms. OAKAR. What is your interpretation of the Gunther framework?

Mr. THOMAS. The cases that we normally—and again, to be more precise, I would have to rely on our attorneys here—consider to fall within the Gunther case are those situations in which the employer has evaluated the job, and the jobs are not then paid in accordance with that evaluation—with the women receiving less money or less pay under that system than men. Or the jobs are not paid up to the level that they are being paid in the case of men.

The cases that we have in-house do not include that. They do not include the kind of employer evaluation that you have in Gunther or in AFSCME.

Ms. OAKAR. Have you found a vehicle to further develop the law in comparable worth?

Have you found any vehicles for that?

Mr. THOMAS. As I indicated, we were looking in the private sector. We do not have litigation authority in the public sector. It is better for us, at the agency, to have a private sector case, so we can litigate it up through the district courts and the circuit court and the court of appeals.

We thought that we had such a vehicle. We are now—the general counsel in a national litigation plan—pushing the field to develop again such a litigation vehicle.

As you remember when I testified before you the last time, we did not have a general counsel. And, accordingly, did not have a litigation plan of any sort.

We think that we have a national litigation strategy now which will yield us not only better cases in the sex discrimination area, the sex-based wage discrimination area, but in all other areas.

Again, this specific issue is being pushed by the general counsel.

Ms. OAKAR. Well, this is the third year of this administration. You mean you have not found one public sector case that you could recommend to the Justice Department for litigation?

Mr. THOMAS. Historically cases that are investigated under title VII are routinely recommended to the Justice Department.

Ms. OAKAR. Well, what are routinely recommended?

Mr. THOMAS. Or referred to the Justice Department, not recommended. We do not make recommendations to——

Ms. OAKAR. Well, what routinely referred cases have you recommended to the Justice Department?

Mr. THOMAS. Well, they are our standard title VII discrimination cases. Under the Equal Pay Act, we can handle those. Again any case that alleges sex discrimination that we have fully investigated, and where conciliation has failed for enforcement, we refer those to the Justice Department and the public sector cases by statute are referred to the Justice Department.

Ms. OAKAR. Are you going to make a recommendation to the Justice Department with respect to whether or not they should intervene in the Washington State case that was discussed earlier by AFSCME?

Mr. THOMAS. Yes, we certainly will. It would go much further than simply a recommendation.

Ms. **Oakar**. What do you plan to do?

Do you think that the Justice Department should intervene in that case in a negative fashion? What would be your recommendation in that instance?

Mr. **Thomas**. Well, first of all, it would be the Commission's recommendation, and that requires a vote by the Commission. And I do not think I should prejudge that.

We take our recommendations, of course, from our general counsel, who has indicated that he has yet to receive the entire record; and certainly has not reviewed the entire record.

I think that it would be prudent for me to await that.

Now, my staff has advised me that the *AFSCME* case is simply a straight *Gunther* case. That it is not—does not in any way expand the Supreme Court's ruling in *Gunther*. There is a difference of opinion, obviously, by the Justice Department about that. And I am certain that is one point that we would have to clarify before anything was done.

Ms. **Oakar**. So, again, it is going to depend on what framework or what definition you give to *Gunther*.

Mr. **Thomas**. Well, the whole issue we are talking about here is definition. Wage discrimination has been defined by the Supreme Court to include certain things.

One of the areas which the Supreme Court specifically declined to touch was this notion of comparable worth. The district courts—

Ms. **Oakar**. That does not mean they were opposed to it, by the way.

Mr. **Thomas**. But the District Courts have not picked up the slack. And have not come forth and indicated that the issue of comparable worth constitutes wage-based discrimination.

Ms. **Oakar**. You have started a system that you discussed with one of my other colleagues, and established a kind of work group to identify the parameters of wage discrimination under title VII, job evaluation systems, and whether or not you should advocate any job evaluation is that correct?

Mr. **Thomas**. That is right.

Ms. **Oakar**. Have you established that work group to expedite the process or just to slow it down? What is the purpose of it? Many women who are paid so inadequately, do not have always the resources to hire attorneys to go to Federal court; they depend on EEOC to bring down some kind of decision.

Is the function of this work force to really get on with the show or to stall around?

Mr. **Thomas**. Historically, the Equal Employment Opportunity Commission and Justice Department have only litigated about 5 percent of all employment discrimination cases.

The rest of those cases have been litigated by private parties. That is a problem across the board—whether or not an individual is in a position to litigate his or her own case.

There is not a whole lot that I do to waste time, we do not have that much. The work group that I have established is attempting to resolve a very difficult issue which has not been grappled with either, in the judiciary or in the legislative branches of Government.

The issue of comparable worth was specifically rejected by Congress when the Equal Pay Act was passed. When I testified before this committee in September of 1982 there was some talk of introducing legislation to fill the gap.

Senator Kennedy indicated that he felt that it was necessary to introduce legislation to fill the gap.

It is obvious that the issue is not a settled one, either in the legislative branch, the executive branch or in the judiciary.

Ms. **Oakar**. Well, the Chair feels the laws are on the books. I think that you are guided by two laws that are unquestionably there: title VII of the Civil Rights Act and the Equal Pay Act. They are right out there for you to take action.

And the Chair is just concerned that when you establish another level of bureaucracy to define terms and develop criteria as you have put forward in terms of establishing this work group; that it is another way of not getting on with the process that women so desperately need.

For example, in your interim guidance report that is dated September 15, 1981, EEOC established procedures for its field offices to use, for investigating sex-based wage claims; you spell out a significant data gathering exercise.

What benefit is there in gathering this data when EEOC still does not have a policy, and thus cannot use any of it to move the case forward? Why are the guidelines still interim after 2½ years?

Mr. **Thomas**. The Commission, first of all, does not need a policy in the area of *Gunther*. We have an investigation manual. We have a Commission that can make a decision on specific cases.

None of these cases that have come forward on their face can be decided without investigation. What we are attempting to do is to carefully assess the cases that we get in and to make a decision.

The cases, as I have indicated to you, that we have inhouse are not cases that fall within current case law.

Ms. **Oakar**. How many cases are there?

Mr. **Thomas**. 266.

Ms. **Oakar**. You have not found one case that clearly relates to disparity and inequity. There is not one——

Mr. **Thomas**. I think we are confusing a couple different issues. We are not saying that there is no disparity in income or that there is not inequity. I mean, that is a much, much broader term.

What we have to do when we go into court, we have to have the existing case law at our side. We have got to be in the position to win.

Ms. **Oakar**. Well, that is what I am asking, you do not find the law on your side. Is that what you are saying?

Mr. **Thomas**. The cases that we have inhouse, they do not fall within the ambit of current case law.

The cases that have been before the district courts as comparable worth cases have been summarily rejected. In the face of that, I do not think that it would be prudent for us to continue to take those cases before the same district courts.

What we have to do is find the case that we can win. We thought that in the private sector—when I was here in September of 1982—that we had such a case. I think that with the effort that we are making now within the Commission, we will find such a case. But the 260-plus cases that you are talking about, do not fall within current case law. And we do not think that without further investigation or with something different in those cases, they are going to be winnable.

Ms. **OAKAR**. AFSCME had filed some charges that related to the state of Ohio, the city of Los Angeles, the State of Wisconsin, the city of Philadelphia, the city of Chicago, Nassau County was mentioned earlier, Reading, Pa. school district, and there are a host of other cases. What about those charges, are there any merit in any one of those?

Mr. **THOMAS**. Some of those may be in the field; I am not familiar with all of those charges. As I indicated, we receive——

Ms. **OAKAR**. Well, they have been pending since 1980—some of them since 1981. That is 2 years and 3 years later.

Mr. **THOMAS**. Well, as I indicated, if they have been filed, they are in the field perhaps being investigated. I am not familiar with all individual cases of those 10,000 sex-based wage discrimination cases that we receive each year.

And I am certainly—if we did have them, not at liberty to discuss them, because they are confidentiality provisions.

Ms. **OAKAR**. Can you tell the Chair whether or not you feel there is substance in these cases that have been highly publicized?

Mr. **THOMAS**. I am not at this time familiar with all of those cases personally. They may be in the various district offices around the country. I am certain that if they do have them there, they are being investigated. We could report back to you and to the committee on that. Again, we have to abide by the confidentiality provisions of the statute. The parties are obviously free to publicize their cases, but we cannot.

Ms. **OAKAR**. But there has been an action, and some have been pending since 1981. This is a union that has resources to represent its members.

What about the women who are out there, and the men, who do not have those kinds of resources? If you do not act on those, how does the public really expect that the law is going to be enforced with some degree of vigor?

Mr. Bosco?

Mr. **BOSCO**. Thank you, Madam Chair.

Mr. Thomas, I have to say that I have not really followed your performance or that of your agency, and I can certainly understand that there is tremendous difficulty in understanding all the concepts, much less the legal precedence that have been set, and what may be happening in 50 different States.

But let me start from the beginning in one way: What is the difference between work of equal value and comparable worth?

Mr. **THOMAS**. I do not know.

Mr. **BOSCO**. But you make a distinction in your testimony——

Mr. **THOMAS**. The problem for us in legislation like this, if we do not have a clear definition—the broader the definition or the more subject the definition is to numerous interpretation—the greater difficulty we have in enforcing it.

If by this you mean comparable worth, I think it should be set out.

Mr. Bosco. But even in saying that, what do you mean—what would you say work of equal value is as opposed to comparable worth? Are they one and the same? Or are you saying that there is a dispute over what Congress meant in the terminology?

Mr. Thomas. That Congress meant in what?

Mr. Bosco. In its terminology?

Mr. Thomas. Well, as I remember—and I am not that familiar with all the personnel rules and the context in which that term was used—it was talking about the value placed on jobs within the Federal Government as it related to jobs in the private sector. And that the jobs would be valued, I think, at some fair way, based on some reference to the private sector.

Now, in the comparable worth area, it is the intrinsic worth of the job or value of the job that we are talking about; whether or not the job of the nurses is intrinsically the same value of a job of a corrections officer.

And without, again, reference to the open market. But in the personnel legislation, there is specific reference by Congress to the private sector in valuing the jobs.

Mr. Bosco. All of us agree there is a problem. You mentioned that your mother was a domestic; Congressman Oberstar said his mother worked in a shirt factory and made infinitely less than men did.

Mr. McCarthy said that California has all kinds of laws and resolutions on the books, but they have not made much progress in the whole thing.

I would guess that everybody agrees that the problem exists, but there is probably a lot of confusion as to what would be a step-by-step process for solving this problem.

I think that, first of all, you would have to resolve what jobs are worth the same as other jobs. And that alone would be a monumental effort. Say, that is for the first step. Then, there would be other steps after that.

But given that this is a loaded gun at the head of virtually every city, county, State, and the Federal Government, because of these court cases that are coming down, and because of this historical pattern; it is a loaded gun at the head of all private business, probably, for very much the same reason.

Is anybody actually putting together a step-by-step, "how to do it" manual? You know, this is what we mean to the private sector? This is what we mean to the city government in Woodland, Calif., as to what you should be thinking about; what you should be doing right now. Is anybody doing that?

Mr. Thomas. I am certain that someone is doing it. It is not as clear. Things are not as settled as that. Of course, we do have, as I indicated earlier, our own educational program in an effort to educate the public and employers as to what the existing law is. Giving an example of the way something was handled a little bit differently: When the problems arose as to whether or not treatment of pregnant employees in certain ways in the past were discriminatory, after we did attempt to advance the law, Congress took the next step and amended title VII, to make sure that, again, the adverse treatment of pregnant women would constitute discrimination. Again, that was after a Supreme Court case.

No one, to my knowledge, is putting together, at least in the Federal Government, a step-by-step manual.

I think the first stop is to determine whether or not comparable worth constitutes sex-based wage discrimination. We can enforce sex-based wage discrimination laws.

Ms. OAKAR. Would the gentleman yield on that point.

The point is that Mr. Thomas appeared before the committee on September 30, 1982, at which time he testified that the issue comparable worth was a priority.

It was not until February 7, 1984, that the Director of the Office of Legal Counsel received a memorandum from Alvin Golub, Director of the Office of Program Research, entitled "Resource Needs Related to Comparable Worth."

In the memorandum Mr. Golub suggests that there be a creation of a work group such as the one that we discussed earlier.

So, your question about anyone wanting to do something about it or wanting to define it is a very pointed one and, I think the facts are that, while this was supposed to be a high priority, EEOC has just gotten around to thinking about it by suggesting a bureaucratic level to deal with it.

Thank the gentleman for yielding.

Mr. BOSCO. Thank you, Madam Chair.

I am a little less convinced that the law is that clear in all these areas. I think the law should be clear. That's sort of what I'm getting at, because I know the people that work in all these local governments, on the boards of supervisors and county commissioners and whatever.

And I know that they are not aware of all the considerations that they should be making, and I guess what I'm asking is, is this going to grow up like Topsy, one court decision at a time, one State here, one State there, till we finally over the years know what kind of a problem we're facing, or is there somebody that's going to come up with some legislation that'll put it to rest maybe a little quicker than that?

Mr. THOMAS. And I don't have all the answers. I want to refer back to one thing for a second, though. One of the efforts that I attempted to put forward in this area when I first came on board was to get some guidance in-house to our own people on wage discrimination.

We did not have that guidance. We do have it now. Again, that was at my insistence and my initiation. I will admit that things don't go as fast as I'd like to see them go in Government, but I think we are on the move now, and I think that we will have the guidance now.

I feel that there are certain areas where perhaps Congress could make some changes. I think that it is clear to me from having testified on the Hill on a number of occasions that there are some misconceptions about what we are and we are not able to do.

I think that personally, and this is my personal point of view, that one way to bring more knowledge to the Hill in the area of title VII and wage discrimination laws and a lot of other things is to first of all make them applicable to the Hill.

I think that the same wage discrimination problems that you have in society at large, the differentials, the disparities in income, are as prevalent on the Hill as they are other places. And I think it would be clear if they are applicable to the Hill that the EEOC—although there is a small area where there's disagreement, where there is confusion, and so forth—that by and large, of the 10,000 cases that we get in, the law is absolutely clear, and it would be clear in any instance. There's just a small area where there is disagreement, both legally, ideologically and philosophically, in this society.

Mr. Bosco. Well, thank you very much. I know that we could go on forever on this, but I really hope that we can come up with some direction, perhaps from you personally, or your Commission, or the administration, or whatever.

I would like to see us come up with some clearer direction than we have, because I think there are a lot of people with expectations and a lot of people who will ultimately have legal responsibility who have no idea what we're even talking about in this field.

Thank you, Madam Chair.

Ms. **Oakar**. Thank you. I want to tell the chairman that I agree with you about the Hill, and hopefully our bill that relates to Federal employees serves as a benchmark on that. I've brought up the subject repeatedly, and as a matter of fact I serve on a task force that relates to wage discrimination on the Hill.

And I'm proud to serve on the task force, and feel very strongly about it. I agree with you that we shouldn't be skirting the law as well. That's why your role is very important. You have the jurisdiction to cover all of us in enforcing the law, and being an advocate for equity. We do not—if we're not paying our secretaries, or if our legislative assistants or our administrative assistants are not paid comparably to their male counterparts, you'll have the responsibility to take us to task on that, when those charges are filed.

There's the tremendous lack of advocacy, and this defining of terms and establishing work forces seems to perpetuate the problem. All we're asking you to do is to do your job.

Thank you very much for appearing.

[The following response to written questions was received for the record:]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

MAY 2 1984

Honorable Mary Rose Oakar
Chair
Subcommittee on Compensation
and Employee Benefits
U.S. House of Representatives
406 Cannon House Office Building
Washington, D. C. 20515

Dear Ms. Oakar:

Attached are my responses to the Committee's additional questions regarding the pay equity legislation.

Also, I understand that a staff member from the Commission's Office of Congressional Affairs will be meeting with your staff next week as a follow-up to this response.

If we can be of further assistance to you or your staff, please let me know.

Sincerely,

Clarence Thomas

Clarence Thomas
Chairman

Question 1 (a):

You also stated in your testimony that EEOC was, and once again I quote "looking for appropriate litigation vehicles to further develop the law in comparable worth." Can I take it that you have not found such a vehicle? Is this the only reason you have not pursued a "comparable worth" case?

Answer:

To date, we have not found a suitable litigation vehicle for clarifying the state of the law with respect to wage discrimination. If the Wage Discrimination Task Force is unable to find such a case in headquarters, we will attempt to do so through our field offices. I have already informed the district directors to look for and notify headquarters of pay equity charges that they receive.

The Commission's interest in the area of wage discrimination remains a priority. On May 1, 1984, the Commission approved the Compliance Manual Section, 633 "Wage Discrimination". This section provides guidance to the field in processing Gunther type cases. A copy of Section 633 will be provided within the next few days.

Question 1 (b):

[What is the status of the] charges filed by AFSCME:

	Filed
State of Hawaii	1/81
City of Los Angeles	7/81
State of Wisconsin	2/82
City of Philadelphia	10/82
City of Chicago	1/83
Nassau County	5/83
Reading, Pa School District	8/83

Answer:

The following response gives only a general and random description of the status of the above referenced charges. The Commission is not permitted to publicize charges absent the consent of the parties involved. See Section 706(b) and 709(e) of Title VII.

- Includes 17 charges filed 10/82. A request for information was sent to the respondent who refused to comply. The material was obtained eventually by a subpoena. The Commission has now requested additional information from the city as well as from the charging parties. The district office is awaiting these submissions.
- Includes 63 charges filed 9/83. These charges are in deferral to the Pennsylvania Human Rights Commission.
- Includes 18 individual charges filed 2/82. Headquarters staff has been requested to follow-up on this investigation and provide any guidance which may be needed.
- Includes 26 individual charges and is currently in active investigation. A response to a request for information by respondent was inadequate and a subpoena requesting additional information was issued 4/84.
- Negotiated settlement on 3/12/81. Charge closed.
- Filed 8/81. Charging party contacted. Headquarters' staff has been asked to monitor the status of the charge investigation and to provide any guidance which may be needed.
- The charge was filed on June 6, 1983 with AFSCME. The charge number is 021-83-3147. On April 2, 1984, the New York District Office received a letter from Winn Newman, Attorney for AFSCME, dated March 30, 1984, requesting a Right to Sue Notice. On April 3, 1984, the New York District Office sent a form letter to the Department of Justice for issuance of the Right to Sue Notice.

Question 1 (c):

In addition, what action did the Commission take in the case filed by the American Nurses Association in Pittsburgh and in Illinois? If no action was taken, why?

Answer:

- Charges filed 8/77. Subpoena was issued and subsequently enforced in federal district court and returned to the Commission for processing. Matter is currently in investigation and under review by the legal unit regarding the appropriate statistical analysis.

  Includes 14 individual charges. Charging parties requested notice of Right to Sue which was issued. Charge, was, therefore closed on 2/84.

Question 2 (1):

We understand that:

-- EEOC has the responsibility to administer Title VII with regard to both public and private sector employers and EEOC has issued numerous guidelines and taken positions in numerous cases interpreting Title VII which have been given great deference by the courts (according to EEOC's handbook Eliminating Discrimination in Employment: A Compelling National Priority); and

-- EEOC was directed and given authority to coordinate all Federal departments and agencies enforcing equal employment laws and policies by Executive Order 12067; and

-- EEOC was further directed by that Executive Order to establish uniform standards, guidelines, and policies defining employment discrimination; and

-- EEOC filed an amicus brief in the Gunther case; and

-- The Chairman is quoted in the February 7 edition of the Daily Labor Reporter as saying the Washington State case is "straight Gunther," and if the Washington State case were in the private sector, the Commission would be "right out there" supporting the women who challenged the salary system; and

-- The Chairman said in his testimony before the Manpower and Housing Subcommittee of the Committee on Government Operations on March 14 of this year that the Washington State case is "a clear case of intentional sex-based wage discrimination."

Based on this, why does the Chairman believe that EEOC does not have the authority to file a brief in the Washington State case or any public sector case?

Answer

The Commission does not have authority to file suit against a state, nor could it intervene in the case, without the consent of the Attorney General. See 42 U.S.C. §2000e-5(f)(1). A reading of the following section should help to clarify the Commission's authority in the area of public sector litigation. Section 706 (f)(1), of Title VII states that:

> If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under

> subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent *not a government, governmental agency, or political subdivision named in the charge*. *In the case of a respondent which is a government, governmental agency, or political subdivision*, *if the Commission has been unable to secure* from the respondent a *conciliation* agreement acceptable to the Commission, *the Commission shall take no further action* *and shall refer the case to the Attorney General who may* *bring a civil action* against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. (Emphasis added)

Question 2: The Washington State case has been held out by some to be a clear cut example of a comparable worth case, i.e. employees were not given equal pay for work of comparable value. On the other hand, some argue that this case is traditional sex-based wage discrimination. Is EEOC's view consistent with that expressed by the Chairman at the March 14 hearings?

Does EEOC plan to take an official position on this case and, if so, what has EEOC's General Counsel done to develop a position?

When will an official position be ready and how will it be used, could an amicus brief be forthcoming?

Answer:

> The Office of General Counsel currently is reviewing the *Washington State* case and when that review is complete will make a determination on whether to recommend that the Commission participate in the case as *amicus curiae*. (Since the case is against a public employer, the Commission could not have filed suit against the state in the first instance, nor could it have intervened in the case. *See* 42 U.S.C. § 2000e-5(f)(1) (Attorney General shall litigate Title VII claims against state and local governments).)
>
> As a rule, the Office of General Counsel does not make a final decision on whether to participate in a case as *amicus* until it has reviewed the full record and transcript in the case. Review of the transcript is particularly important in fact-intensive cases such as the *Washington State* case. The transcript of the *Washington State* case has not yet been filed with the court. The court has, however, established a tentative briefing schedule requiring the appellant (the state) to file its brief 60 days after the transcript is filed. The Office of General Counsel will make a decision some time before this deadline on whether to recommend *amicus* participation.

Question 3:

In 1979, the EEOC commissioned the National Academy of Sciences to determine whether nonbiased job evaluation measures exist or can be developed. Why, after two years of study, was the NAS study insufficient and how long will this EEOC study take? Also, why do you expect this current study to result in anything different?

Answer

The NAS study was not insufficient, it was, however, inconclusive because of the undeveloped nature of the technology involved in job evaluations.

The EEOC work group, using actual case files, will be presenting options papers to the Commission on the various issues involved in comparable worth, which are raised by these case files. The group will not again study the issues studied in the NAS report. However, very real questions involving job evaluation may be raised by the files.

For example, the National Academy of Science study, "Women, Work and Wages: Equal Pay for Jobs of Equal Value" questioned the usefulness of job evaluation plans to establish comparable worth:

> [S]everal aspects of the methods generally used in such plans raise questions about their ability to establish comparable worth. First, job evaluation plans typically ensure rough conformity between the measured worth of jobs and actual wages by allowing actual wages to determine the weights of job factors used in the plans. Insofar as differentials associated with sex, race, or ethnicity are incorporated in actual wages, this procedure will act to perpetuate them. Statistical techniques exist that may be able to generate job worth scores from which components of wages associated with sex, race, or ethnicity have been at least partly removed; they should be further developed.
>
> Second, many firms use different job evaluation plans for different types of jobs. Since in most firms women and minority men are concentrated in jobs with substantially different tasks from those of jobs held by nonminority men, a plan that covers all jobs would be necessary in order to compare wages of women, minority men, and nonminority men. The selection of compensable factors and their weights in such a plan may be quite difficult, however, because factors appropriate for one type of job are not necessarily appropriate for all other types. Nevertheless, experiments with firm-wide plans might be useful in making explicit the relative weights of compensable factors, especially since they are already used by some firms.
>
> Finally, it must be recognised that there are no definitive tests of the "fairness" of the choice of compensable factors and the relative weights generating a wage structure that is deemed equitable depends on achieving a consensus about factors and their weights among employers and employees.

The Commission is attempting to address this complicated area on a case by case basis. It is not possible to project if and when the Commission will be able to resolve the questions raised by the National Academy of Science study.

Question 3.1: It is my understanding that in 1981 the General Counsel filed 46 Title VII, concurrent Title VII-EPA, and solely EPA cases. In 1982, this number dropped to 31, and in 1983 to 28. It would certainly appear, based upon this data, that the interest of the EEOC or the Office of General Counsel was not as enthusiastic as it should be in filing these cases since I am convinced that the substantial drop in the number is not because sex-based wage discrimination is not as great a problem today as it was a few years ago.

[a] Can you tell me why EEOC has filed fewer cases in 1983 than in 1981, why there was a drop of almost 40 percent?

Answer:

Over the last few years the Commission has experienced a decline in cases filed under all three statutes that it enforces (Title VII of the Civil Rights Act of 1964, the Equal Pay Act, and the Age Discrimination in Employment Act), not just a decline in sex-based wage discrimination cases. The decline in wage discrimination cases is a matter of particular concern to the Commission and the General Counsel. This decline is definitely not due to any lack of interest in such cases on the part of the EEOC. Rather, it is primarily the result of a lack of sufficient numbers of fully investigated cases worthy of Commission litigation, which in turn is one result of the Rapid Charge Processing System instituted by the Commission in 1979. This system gave paramount emphasis to rapidly closing charges of discrimination through negotiated settlement without due regard to the litigation potential of the charge, the complexity of the charge or the exigencies of the investigation.

While the adoption in 1979 of the rapid charge process fulfilled an institutional need to maintain a manageable workload inventory, the considerable emphasis on this process had an adverse effect on the Commission's ability to address the merits of employment discrimination claims. The rapid charge process was especially inimical to Equal Pay Act and Title VII sex-based wage discrimination litigation. Such cases usually necessitate on-site, detailed investigations of job content and working conditions. The Rapid Charge Processing System's emphasis on charge processing has brought about a particularly severe decline in the quality and quantity of investigations under the Equal Pay Act (EPA). Under that Act a charge is not a necessary predicate to an investigation; the Commission has authority to investigate wage discrimination on its own initiative. The Department of Labor (which had EPA authority before 1979) directed much of its enforcement activity under the EPA to class wage disparities often disclosed as a by-product of investigations to obtain compliance with the minimum wage and overtime provisions of the Fair Labor Standards Act. However, because of the Rapid Charge Processing System and budgetary constraints limiting on-site investigations, EEOC's enforcement efforts have primarily been limited to charges filed under the Equal Pay Act. As noted in our annual reports, 24% fewer EPA charges were received by the EEOC during FY-82 than FY-81. Also, of the number received, 10% more were resolved (closed) during the administrative process, which in turn reduces the number of cases recommended to headquarters for litigation.

To address these problems, the Commission on December 6, 1983 unanimously passed a resolution directing substantial modifications in the Rapid Charge Processing System aimed at making the system more responsive to EEOC's law enforcement responsibilities. We expect that these changes will lead to improvements in both the quantity and quality of the Commission's litigation of wage discrimination cases.

In particular, the December 6 resolution recognizes the importance of on-site investigations in wage discrimination cases and directs that more thorough on-site investigations be conducted in virtually all such cases. Also, the Office of General Counsel has proposed and the Commission has adopted a National Litigation Plan that is intended to guide the Commission's field enforcement officials and attorneys in the selection of cases that the Commission believes to be of high priority for EEOC's litigation program, such as wage discrimination cases. These initiatives will strengthen greatly the Commission's litigation program and thereby also enhance the Commission's efforts to redress wage discrimination.

The Commission and the Office of General Counsel consider wage discrimination to be an especially important issue and will continue to enforce vigorously Title VII and the Equal Pay Act in order to eradicate wage discrimination in any form. Through its participation in landmark cases such as County of Washington v. Gunther, 452 U.S. 161 (1981), and IUE v. Westinghouse Electric Corp., 631 F.2d 1094 (3d Cir. 1980), cert. denied, 452 U.S. 967 (1981), the Commission has contributed significantly to the development of favorable legal principles necessary to litigate wage discrimination claims in the future. The Commission and the Office of General Counsel remain fully committed to the investigation and litigation, on a priority basis, of cases alleging intentional wage or salary discrimination in violation of Title VII and/or the Equal Pay Act, including cases involving issues like those addressed in the Gunther and Westinghouse cases, whether based on sex, race, color, religion or national origin.

The EEOC currently has 81 wage discrimination cases pending in litigation (cases under Title VII alleging wage discrimination on the basis of sex; sex-based wage discrimination cases filed concurrently under Title VII and the Equal Pay Act; and cases filed under the Equal Pay Act). In addition, in calendar year 1984 to date, the Commission has approved for filing five Equal Pay Act cases; eight Equal Pay/Title VII cases; and one Title VII sex discrimination case involving wage discrimination. These cases either have been filed or will be filed in the near future.

Question 3.1 [b]: It is also my understanding that in 1981 that more than two-thirds of the cases were resolved, in 1982 less than 50 percent were resolved, and in 1983 less than 25 percent.

What is causing this trend?

Why were so many fewer cases, on a percentage basis and in absolute numbers, resolved in 1983 than in 1981?

Answer:

The litigation statistics to which you refer are those on the attached chart (Attachment A) entitled, "Title VII Wage Discrimination/Equal Pay Act Cases Filed Since January, 1981," which the Office of General Counsel submitted on March 12, 1984 to the Subcommittee on Manpower and Housing of the House Government Operations Committee. The percentages of cases resolved that you cite, however, reflect a misinterpretation of the March 12 chart.

The chart shows the number of cases filed in calendar years 1981, 1982 and 1983 within each of the following categories: (1) cases under Title VII alleging wage discrimination on the basis of sex; (2) sex-based wage discrimination cases filed concurrently under Title VII and the Equal Pay Act; and (3) cases filed under the Equal Pay Act. Under each year's column, the chart then shows the current status (as of March 12, 1984) of those cases filed in the year in question, that is, how many of the cases filed in that year alone have been resolved from that year to the present. Thus, for example, the chart shows that of the 46 cases filed in calendar year 1981, 33 were resolved between 1981 and the present, while 13 are currently pending in litigation. Similarly, of the 27 cases filed in 1983, 5 have been resolved to date, while 22 are still in litigation.

The figures do not reflect any trend in case resolutions; rather, they result simply from the fact that a higher percentage of the cases filed in earlier years will have been litigated and resolved by this time than the cases filed more recently.

The total number of cases in the three categories noted above (Title VII/sex/wage discrimination; EPA; concurrent Title VII/EPA) that were resolved each year is as follows:

Calendar Year	1982	1983
Cases Resolved	62	45

We do not have a total for 1981 because the Office of General Counsel did not have its System 06 case tracking system in operation at that time.

Question 3.1 [c]: Does the Office of the General Counsel have sufficient resources?

Is the staff at the same level today as in 1981?
If not, how many fewer positions are there now?

Answer:

The Office of General Counsel had the following numbers of attorneys in the field legal units from FY '80 to FY '83:

FY '80 - 294
FY '81 - 268
FY '82 - 234
FY '83 - 226

In addition, there are currently 48 attorneys in headquarters Office of General Counsel.

We believe that the Commission can and should be litigating more cases by using existing resources and existing legal staff more effectively and efficiently. The diminution in case filings over the last few years has not been due either to a lack of resources, or to some sort of official unwillingness to litigate more cases or particular types of cases despite the availability of resources. Rather, as noted previously, the decline in cases is a direct result of the Rapid Charge Processing System, which the Commission now has substantially modified.

The Commission will continue to try to increase the numbers of good quality cases that it files. If in the future the pool of cases available for litigation increases to the point that additional attorneys are needed, the Commission will reallocate legal staff as necessary or will take steps to obtain an increase in legal staff.

Question 3.1 [d]: How have the cases been resolved? I would appreciate it if you would provide this subcommittee with full information on this, as well as where the cases were filed.

Answer:

The attached list that the Office of General Counsel provided to the Subcommittee on Manpower and Housing on March 12, 1984 (Attachment B) gives the following information on Title VII wage discrimination/Equal Pay Act cases filed by the EEOC since January, 1981: (1) column 1: the name of the defendant, the civil action number assigned by the court, the district court where the case was filed, and the type of resolution, if applicable, and date of resolution; (2) column 2: the date the case was filed in court, the statute(s) under which it was filed, i.e., Title VII, Title VII/EPA, or EPA; and (3) column 3: the basis or bases of discrimination alleged in the case, and the issue(s).

Question 4:

In light of the current comparable worth controversy, the many legal and legislative initiatives throughout the country, and considering the mandate of the EEOC, shouldn't the EEOC be actively determining the appropriate role (if any) the Federal government should take in establishing guidance for determining whether job evaluation systems comply with discrimination laws?

Hasn't EEOC's only substantive actions been limited to reviewing judicial decisions to determine if legal procedents have been set that could be applied to other cases?

If no: What other significant actions have been taken?
If yes: How do you reconcile these limited efforts over the last five years with EEOC's prescribed responsibilities to define wage discrimination which according to EEOC's temporary guidelines includes Title VII, Gunther-type (i.e. comparable worth) cases?

Answer

As I have testified on April 4, 1984, I do not perceive it as the role of a federal agency to create law. Our role is to administer and interpret the law as it stands. Developing guidance for determining whether job evaluation systems comply with discrimination laws may be inappropriate and very difficult for the EEOC.

Further, EEOC has not just reviewed judicial decisions. We also have developed a compliance manual section on wage discrimination which helps our field staff to understand the various issues involved and provides guidance on investigating wage charges. We actively sought and unsuccessfully attempted to develop for litigation a charge involving dissimilar jobs where there was evidence of intentional wage discrimination. We have identified another such charge and are awaiting receipt of the file from the field. The task group has reviewed in excess of 175 headquarters files; and is preparing its case recommendations for the Commission's consideration.

Question 5 (1):

It is my understanding that there are currently 266 pending wage discrimination charges before the EEOC, those cases in which the Commissioners have not yet approved administrative findings and recommendations and that some of these date back until/1974. Is that correct?

You mean to tell me that while you have been studying this issue, assigning memoranda, and creating task forces, there are 266 charges sitting in your files? There are victims of wage discrimination dating bact to 1974 who have their complaints unresolved, people who have had to wait a decade for your agency to act?

When do you intend to begin to act like a concerned enforcement agency?

Answer

You are correct in your understanding that there were 266 wage discrimination charges awaiting a Commission decision and that some of these charges (four to be exact) were filed in fiscal year 1974. As of April 30, 1984, the Commission had 277 wage discrimination charges at headquarters.

I take issue with the implication that the Commission has not acted "like a concerned enforcement agency." The Commission's responsibilities in the employment discrimination area cover many other issues in addition to wage discrimination. In fact, in FY 83, charges were filed with the Commission covering 25 general issues. Further, the Commission receives approximately 10,000 wage charges annually. Most of these are quickly processed. The cases which have not moved are those which appear not to fall within the Gunther framework or the existing law on wage discrimination.

Question 6:

In your testimony in 1982, you said with regard to our concerns about systemic sex-based wage discrimination in the Federal government that, and I quote, "This is an area where I think there has been some letdown or we have not gotten the forceful commitment that there should have been. But you have my commitment that we will pursue very vigorously the inequities and discrimination in the Federal workforce."

What have you done since that time?

What is your position on section 3 of H.R. 5092 and on the Federal Pay Equity Act of 1984?

Answer

First of all, the statement referenced above was made in response to a question posed by Representative Schroeder. The statement was not a part of my "testimony" as you indicate. In response to the following questions from Representative Schroeder, I responded, as follows:

Question from Representative Schroeder-

"Do you feel that the reorganization plan gives you the authority to look at comparable worth? We felt it did and I was just wondering if you felt that it did?"

Answer by Chairman Thomas -

> "I do believe that we do have a responsibility to look at that issue both in the private and public sector including the Federal work force. The point that I was making is that with respect to pay equity problems from our complaints we have not received many in the Federal Government. . .

Question from Representative Schroeder-

> . . . I find it to be as big a problem as it is in the private sector. So I hope we can get a commitment from you to help us address that issue. I think it is always nice to have your own house in order before you go out and preach to the private sector. So I hope I can get you on board and looking at the data with us so we can move on that issue in the Federal Government before long.

Answer from Chairman Thomas-

> You have my commitment that we will begin to, and this is an area where I think that there has been some letdown or we have not gotten the forceful commitment that there should have been. But you have my commitment that we will pursue very vigorously the inequities and discrimination in the Federal work force."

Answer (con't): What have we done since that time?

We have moved forward in this area on at least four fronts:

° We have completed a draft of regulations for processing complaints filed by federal employees in cases alleging Equal Pay violations. These regulations will be issued for comment to the federal agencies and the public. We anticipate finalizing the regulations as soon after the comment period as possible. Publication of these regulations will undoubtedly cause a considerable increase in the federal Equal Pay Act activity due to increased awareness of the law by federal employees.

° We have increased the federal sector compliance with reporting and planning requirements from 55% in 1982 to 95% in 1983 through the completion of all program elements required for the proper implementation and oversight of the federal affirmative action programs.

° The onsite reviews of agency affirmative action programs, commenced in 1983, have stimulated a great deal of activity in the whole area of affirmative action for women and minorities in the federal community.

- EEO Management Directive 707 A issued in September 1983, outlines the annual requirements for reporting agency workforce profiles. This directive includes criteria for detecting occupational segregation so that the agency might begin to focus on resolving such problems.

- The above-mentioned management directive explicitly states, for the first time, that the promotion-from-within of women and minorities is equally as important as hiring women and minorities. EEO-MD-707A requires agencies to plan how they will move women and minorities upward through the agency and to report, separately from external hiring, any such internal movement made in the prior year.

My position on Section 3 of H.R. 5092 is set forth in my April 4th testimony before the Committee. To summarize, I believe that the language of H.R. 5092 is ambiguous. It also imposes an unwarranted burden on this Commission to compile information which is not required for the Commission to carry out its present responsibilities. Additionally, the provisions would be extremely costly and would divert our staff from the enforcement function.

We will be providing you with additional information regarding the projected costs of compliance by the end of this month (May 1984).

Question 7:

Mr. Thomas, on March 22, 1984, I sent you a letter requesting specific information on sex-based wage discrimination charges and cases in the EEOC. My staff was informed on March 26 that the information was not readily available. I would like to submit the March 22 letter for the record. Do you have any of the information today? When can you complete this request and why was the material not readily available?

Answer:

The questions presented in your March 22nd letter and our responses to each question are noted below:

1. Identify the number and type of wage discrimination allegations currently pending at EEOC with regard to:

   a) the Equal Pay Act;
   b) Gunther
   c) Comparable worth

Receipts

	FY 83	1st Qtr. 84	2nd Qtr. 84
Equal Pay	656	45	228
EP/ T. VII Conc.	1,003	195	517

Closures

	FY 83	1st Qtr. 84	2nd Qtr. 84
Equal Pay EP/ T. VII Conc.	1,493	274	unavailable

We routinely maintain information with regard to the number of charges alleging wage discrimination under the Equal Pay Act.

However, as I have stated in my March 14th testimony before this Committee, the Commission does not separate its wage discrimination claims by issue (whether the charge alleges a disparate treatment issue, such as the disparate treatment issue presented in Gunther, as distinguished from a "comparable worth" issue). Consequently, we do not have information categorized as you have requested.

2. Identify the filing dates of all pending wage discrimination charges.

A. The Commission carries a pending workload of about 30,000 charges. The ratio of wage issue charges to the inventory has been determined to be about 1 in 7 or approximately 4,300 pending wage discrimination charges. We do not have any documentation and the computer is not set up to provide a listing of the filing dates for the 4,300 pending wage charges. However, we can tell you that with limited exceptions, most of the charges filed (93%) are resolved within a 300 day time frame. The average processing time for an equal pay charge has been identified as approximately 217 days.

3. Where [were] the charges filed?

A. The Commission receives charges at each of its 48 district and area offices.

4. [State] whether the charges were filed by individuals, unions or commissioners.

A. The Commission does not maintain information in the manner the information is requested. In order to provide the information as to the identification of the charging party, the Commission's Office of Program Operations would have to establish a computer format which would identify this information. We do not anticipate establishing such a program since the Commission does not require such a program to carry out its statutory duties. Further, if the above information has to be developed manually to respond to this inquiry, we would estimate that the effort would require, at a minimum, the time of 48 Equal Opportunity Specialists (1 per office) for approximately eight work days. A conservative estimate of the costs in terms of salary (based on a GS-11, step 3 level) would be $40,000.

5. How many of the allegations are being investigated by headquarters or the regional offices?

Answer:

The Commission has 277 charges under review at headquarters. We have apprximately 4,100 wage discrimination claims pending in the district and area offices.

6. [Identify the] number of wage discrimination claims which are charges involving wage discrimination which the Commission is currently attempting to conciliate.

Answer:

The Commission does not maintain its charge information in this manner. In order to obtain a status report for each charge to determine whether the charge is in conciliation, we would have to check each file manually.

7. [Identify the] number of charges referred to the Justice Department for civil action.

   Answer:

   The Commission's computers are not programmed to provide this information as to the number of charges referred to the Justice Department. We will make a special request that this information be compiled as soon as possible. However, since the computer staff is involved in an extensive reprogramming effort, we therefore do not anticipate a reply until around June 1.

8. [Identify] any other disposition of the charges.

   Answer:

   Current information is not available this time. However, we can provide information with regard to the number of unsuccessful conciliations by fiscal year. For example, in FY 83, there were 2,162 unsuccessful conciliations (114 - EPA; 1775 -Title VII and Title VII/EPA; and 273 - Age).

1. [Identify the] number of wage discrimination charges filed and types of charges filed since 1975.

Answer		Total # of Wage Charges	Total # of Wages/Sex
FY	1983	13,415	5,633
	1982	10,724	5,458*
	1981	12,809	6,357*
	1980	12,367	6,278*
	1979	8,841	3,354
	1978	8,129	3,487
	1977	13,787	5,608
	1976	16,051	6,860
	1975	11,658	5,229

* Figure includes charges filed under the Equal Pay Act.

Source: EEOC Annual Reports

Although we can identify the number of charges filed by statute, we do not have any further breakdown of "type" of charges filed.

2. Status and disposition of all charges at the end of the year in which they were filed.

   Answer

   We do not maintain the information in the manner requested. Although charge resolution information is maintained by fiscal year, the statistics may reflect charges filed in an earlier year. For example, a charge filed at the end of the fiscal year may be carried over into the next year's statistics.

3. Narrative description of each wage discrimination charge from 1975 to the present.

   Answer:

   We do not maintain the information in the manner requested. It would be virtually impossible to provide a narrative description of every wage charge from 1975 to the present inasmuch as the Commission receives approximately 10,000 wage charges annually.

4. Number of charges referred to the Justice Department since 1975.

Answer

See answer #7 on previous page.

5. Number of civil actions initiated in each year since 1975.

Answer:

The Commission has filed the following suits, which include direct suits, interventions and subpoena enforcement actions, as noted in the Commission's Annual Reports

FY 1975 -	180
1976-	484
1977-	241
1978	188
1979	208
1980	326
1981	360
1982	164 + 77 subpoena enforcement actions
1983	195 + 59 subpoena enforcement actions

Question 8:

Some have stated, critically I might add, that we are trying to underhandedly seep "comparable worth" legislation into the law. I firmly believe that the laws that are in place, the Equal Pay Act and Title VII of the Civil Rights Act of 1964, are adequate, but that Title VII is not being enforced properly. Further, it seems to me that the term comparable worth is being used by opponents to pay equity to create the illusion that something new and radically different is being discussed; when, in fact, we are simply discussing and trying to eliminate a form of discrimination.

Mr. Thomas, how does the elimination of wage discrimination differ from comparable worth?

Answer

One difference can be discerned from the Supreme Court's decision in County of Washington v. Gunther, 452 U.S. 161 (1981). The Court distinguished that sex based wage discrimination claim from a "comparable worth" claim by noting that under a comparable worth theory, "plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs. . ." 1/ and "without direct proof of discrimination." 2/ By contrast, the Court noted that in Gunther, the respondent "sought to prove, by direct evidence, that their wages were depressed because of intentional sex discrimination [due to the employer's act] consisting of setting the wage scale for female guards, but not for male guards, at a level lower than its own survey of outside markets and the worth of the jobs warranted."

1/ 452 U.S. 161, 166

2/ 452 U.S. 161, 166 at f.7

In other words, Gunther involved a claim of intentional sex based wage discrimination. The Court concluded that even absent a showing of substantially equal work, there is a cause of action under Title VII where there is direct evidence than an employer intentionally depressed a woman's salary because she is a woman. The Court did not approve a cause of action based on a "comparison of the wage rates of dissimilar jobs". Such a comparison of dissimilar jobs, without proof of discrimination, is one example of what has been coined "comparable worth".

Further, the theory of comparable worth is based on a comparison of the intrinsic worth of jobs to an employer, rather than on a comparison of the content of jobs. The legislative history of the Equal Pay Act makes it clear that Congress did not intend to extend its remedies to employees performing comparable work which might somehow be determined to be of equal value to an employer.

Representative Goodell, who sponsored the bill that became the EPA, stated:

> I think it is important that we have a clear legislative history at this point. Last year when the House changed the word "comparable" to "equal" the clear intention was to narrow the whole concept. We went from "comparable" to "equal" meaning that the jobs involved should be virtually identical, that is, they would be very much alike or closely related to each other.
>
> We do not expect the Labor Department to go into an establishment and attempt to rate jobs that are not equal. We do not want to hear the Department say, 'Well, they amount to the same thing', evaluate them so they come up to the same skill or point. We expect this to apply only to jobs that are substantially identical or equal. 109 Cong. Rec. 9197 (1963)

Thus, Congress, in implementing the Equal Pay Act, distinguished a claim of sex based wage discrimination from a claim of comparable worth when it adopted the "equal pay for equal work" concept.

The four dissenting justices in Gunther, without disputing the majority's opinion, also emphasized:

> . . . [T]he legislative history of the Equal Pay Act clearly reveals that Congress was unwilling to give either the Federal Government or the courts broad authority to determine comparable wage rates. . . Instead, Congress concluded that governmental intervention to equalize wage differentials was to be undertaken only within one circumstance: when men's and women's jobs were identical or nearly so, hence unarguably of equal worth. It defies common sense to believe that the same Congress - which, after 18 months of hearings and debates, had decided in 1963 upon the extent of federal involvement it desired in the area of wage rate claims intended sub silentio to reject all of this work and to abandon the limitations of the equal work approach just one year later, when it enacted Title VII. 452 U.S. 161, 188

Accordingly, this Commission, which is charged with the interpretation and enforcement of Title VII and the Equal Pay Act, distinguishes a sex based wage claim from a comparable worth claim in a manner consistent with the Supreme Court and legislative intent. Thus, a sex based wage claim presents a recognized cause of action under Title VII. A comparable worth claim, standing alone, may not.

The Commission will continue to pursue any charge which presents evidence of intentional wage discrimination because of an individual's race, color, sex, national origin or religion, even in the absence of evidence that the positions in question are substantially equal.

Equal Employment Opportunity Commission

Office of General Counsel

Title VII Wage Discrimination/Equal Pay Act Cases Filed Since January, 1981*

CASES FILED

	Calendar Year:			
	1981	1982	1983	Total
Title VII Sex Discrimination Cases Filed Involving Allegations of Wage Discrimination	7	2	4	13
Concurrent Title VII/Equal Pay Act Cases Filed	5	4	6	15
Equal Pay Act Cases Filed	34	25	17*	76
TOTAL	46	31	27	104
CURRENT STATUS:				
Resolved:	33	14	5	52
Pending:	13	17	22	52

In addition, in calendar year 1984 to date the Commission has approved four Equal Pay Act cases, six Equal Pay/Title VII cases, and one Title VII sex discrimination case involving wage discrimination.

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*Totals include cases filed from January, 1981 through December, 1983. The table does not include cases that were filed in 1981 and resolved before August, 1982, when the Office of General Counsel first implemented its System 06 case tracking system. Only cases in active status as of August, 1982, or filed thereafter, were entered in the system.

3/12/84

*Revised figure.
One case was erroneously reported twice by System 06, and thus in 3/12/84 submission the figure was also counted twice.

Attachment A

CASES FILED IN CALENDAR YEAR 1981*

[ATTACHMENT B]
3/12/84

- Title VII Sex Discrimination Cases Filed Involving Allegations of Wage Discrimination ("VII")
- Concurrent Title VII/Equal Pay Act Cases Filed ("VII/EPA")
- Equal Pay Act Cases Filed ("EPA")

NOTE: The table does not include cases that were filed in 1981 and resolved before August, 1982, when the Office of General Counsel first implemented its System 06 case tracking system. Only cases in active status as of August, 1982, or filed thereafter, were entered in the system.

DO	RESP/CIV NO./DISTRICT COURT/TYPE RESOL/DATE	DTE FILED/STATUTE	BASIS/ISSUES
AT	City of Spartanburg 81-2561-3, D. So. Carolina S, 09-29-82	11-23-81 EPA	SEX(F) W
AT	Robert & Company C81-2077A, N.D. Georgia S, 09-15-82	08-26-81 EPA	SEX(F) W
BI	Delta Medical Center GS-81-180-WK-0, N.D. Miss CD, 06-23-82	09-08-81 EPA	SEX(F) W
BI	Harrison County Sherrif's S81-0595(R), S.D. Miss CD, 09-20-83	11-10-81 EPA	SEX(F) W
CT	Thurston Motor Lines C-C-81-434-P, W.D. N.C. S, 07-09-82	09-30-81 VII/EPA	SEX(F) WD
PH	A&P et al 81-5374, E.D. Pa. XXXX, 00-00-00	12-31-81 VII	SEX(F)/RAC(B) WHcPK
PH	Drexel Univ, College of Bus. Admin. 81-1043, E.D. Pa. SA, 06-08-82	03-18-81 EPA	SEX(F) W
PH	First National Bank of Philippi 81-283 E, S.D. W. Va. CD, 07-06-83	09-01-81 EPA	SEX(F) W
PH	Gimbel Brothers, Inc. 81-1197, W.D. Pa. DIS, 06-04-82	07-17-81 EPA	SEX(F) W
PH	Pennsylvania Electric Co. 81-1966, W.D. Pa. XXXX, 00-00-00	11-03-81 EPA	SEX(F) W
CH	Formaloy Corp. 81-1146, N.D. Illinois SA, 10-24-83	08-26-81 EPA	SEX(F) W
CH	Game Plan 81 C 3990, N.D. Illinois CD, 11-24-82-3rd	07-15-81 VII	SEX(F)/RAC(B) WPcd

DO	RESP/CIV NO./DISTRICT COURT/TYPE RESOL/DATE	DTE FILED/STATUTE	BASIS/ISSUES
CH	Game Plan 80 C 4659, N.D. Illinois CD, 11-24-82-3rd	07-15-81 EPA	SEX(F) W
CL	Dayton Tire & Rubber Co. et al C-3-81-473, S.D. Ohio STIP&DIS, 09-27-83	09-81-81 VII	SEX(F) WP
DT	Macomb County Community College 81-72542, E.D. Michigan S, 09-24-82	07-08-81 EPA	SEX(F) W
DT	Evening News Association 79-70987, E.D. Michigan XXXX, 00-00-00	05-11-81 VII	SEX(F) WPTcd
DT	J.B. Tool & Engineering 81-70744, E.D. Michigan CD, 09-__-82	03-__-81 EPA	SEX(F) W
IN	Essex Group, Inc. F81-0271, N.D. IND. XXXX, 00-00-00	11-18-81 EPA/VII	SEX(F) W
MK	Slind Winderhoff Assoc 3-81-245, D. Minn. Dis, 06-29-82	04-10-81 VII	SEX(F) WD
NO	Delta Asphalt of Kansas J-C-81-118, E.D. Arkansas Note, 05-21-82	06-22-81 EPA	SEX(F) W
NO	The Country Club of Little Rock L-R-C-81-585, E.D. Arkansas CD, 10-08-82	08-31-81 EPA	SEX(F) W
SL	Riverview Gardens School District 81-0148-C(3), E.D. MO DIS, 05-14-82	04-28-81 EPA	SEX(F) W
SL	Affiliated Foods, Inc. et al 81-6066-CV-W, W.D. Mo. XXXX, 00-00-00	08-19-81 EPA/VII	SEX(F) WSd
DA	Claremore College 81C875B, E.D. Texas SA, 12-27-83	12-21-81 EPA	SEX(F) W
DA	County of Dallas CA3-81-0731-R, N.D. Texas XXXX, 00-00-00	05-05-81 EPA	SEX(F) W
DA	Goodyear Tire and Rubber Company 3-81-1751-C, N.D. Texas DIS, 03-17-83-3d	09-28-81 EPA	SEX(F) W
DA	Murdock Machine & Engineering Co. CA3-80-1668-G, N.D. Texas ? ____, 11-16-81	12-19-81 EPA	SEX(F) W
DA	Pagburn Riviana Foods CA4-81-610E, N. D. Texas SA, 11-10-82	11-09-81 EPA	SEX(F) W
DA	Semedan Oil Company 81-63-C, E.D. Oklahoma J, 04-30-82	02-09-81 EPA	SEX(F) W

DE	Home of Economy A2-81-167, D. N. Dakota O&DIS, 05-20-82	10-29-81 EPA	SEX(F) W
HO	Haygood Tools, Inc. A-81-CA-501, W.D. Texas XXXX, 00-00-00	12-04-81 EPA	SEX(F) W
HO	Texas Dept. of Corrections H-81-280, S.D. Texas CD, 01-18-83	02-03-81 EPA	SEX(F) W
LA	Central News-Wave 813776RJK, C.D. California XXXX, 00-00-00	07-28-81 ADEA/EPA [redacted]	RAC(B)/SEX(F)/AG Wb
LA	Clark County School District 81-660, D. Nevada XXXX, 00-00-00	09-09-81 EPA	SEX(F) W
LA	L.A. Unified School District 812583RT, N. D. California XXXX, 00-00-00	00-00-81 EPA	SEX(F) W
LA	United Community Efforts CV81-1520WMB, C.D. California XXXX, 00-00-00	03-30-81 VII/EPA	SEX(F) W
LA	Argonaut Insurance 812796LEW, E.D. California CD, 03-00-82	06-05-81 EPA	SEX(F) W
LA	Genisco 81-5343, C.D. California CD, 03-00-82	10-14-81 EPA	SEX(F) W
LA	United Community Efforts 811520WMB, C.D. California Dec, 05-17-82	03-30-81 EPA	SEX(F) WDb
PX	Murdock Travel, Inc. C-81-0527W, D. Utah XXXX, 00-00-00	01-17-81 VII/EPA	SEX(F) WD
PX	United Bank of Arizona 81975PHXVAC, D. Arizona DIS, 08-03-82	08-13-81 VII	SEX(F) WKD
PX	Maricopa Community College 811018PHXEHC, D. Arizona J, 08-12-83	08-24-81 EPA	SEX(F) W
SE	Erik W. Polk, MD & Idaho Fls Con Hsp. C81-4044, D. Idaho XXXX, 00-00-00	04-13-81 VII	SEX(F) W
SE	Idaho Falls C81-4044, __________ CD, 06-02-83	00-00-81 EPA	SEX(F) W
SE	United Savings & Loan C81-1504, W.D. Washington CD, 01-24-83	12-23-81 EPA	SEX(F) W
SF	Kahn & Nippert C81-1085 WWS, N.D. California CD, 08-__-82	03-11-81 EPA	SEX(F) W

CASES FILED IN CALENDAR YEAR 1982*

DO	RESP/CIV NO./DISTRICT COURT/TYPE RESOL/DATE	DTE FILED/STATUTE	BASIS/ISSUES
BI	Anderson Electric Company CV-82-G-0622S, N.D. Alabama Ord, 11-21-83	03-24-82 EPA	SEX(F) W
BI	Arrow Truck Lines, Inc. 82-G-0543(S), N.D. Alabama J, 10-14-83	03-15-82 EPA/VII	SEX(F) W
BI	Allstate Insurance Co. J82-0186(N), S.D. Miss DIS, 08-19-83	04-08-82 EPA	SEX(F) W
BI	Lloyd Nolan Hospital CV82-G1417(S), N.D. Alabama XXXX, 00-00-00	06-25-82 EPA	SEX(F) W
CT	Anderson & Webb Trucking Co. C-82-300-WS, W.D. N.C. CD, 12-01-82	03-11-82 VII	SEX(F) WP
MM	Indian River Transport Co. 82246CIVTK, M.D. Florida XXXX, 00-00-00	03-16-82 EPA	SEX(F) W
NY	Astra Pharmaurtical, Inc. 82 Civ 0019, Mass CD, 01-29-82	01-27-82 EPA	SEX(F) W
PH	United Parcel Service 82-0619, W.D. Pa. SS, 12-16-82	04-09-82 EPA	SEX(F) W
PH	W. Virginia Dept. of Health 82-2187, S.D. W. Va. XXXX, 00-00-00	05-04-82 EPA	SEX(F) W
PH	Whiting-Patterson 82-0283, E.D. Pa. DIS, 12-10-82	02-26-82 EPA	SEX(F) W
PH	Eichler Labs 82-3073SA, D. N.J. CD, 12-14-83	09-__-82 EPA	SEX(F) W
PH	Rovner's Department Store 83-0306, D. N.J. XXXX, 00-00-00	11-__-82 EPA	SEX(F) W
PH	United Parcel Service 82-0619, W.D. PA. STIPJ, 12-01-83	04-12-82 EPA	SEX(F) W
PH	Shenandoah Bible Baptist Church 82-00031M, S.D. W.VA. XXXX, 00-00-00	10-20-82 VII	SEX(F) W

DO	RESP/CIV NO./DISTRICT COURT/TYPE RESOL/DATE	DTE FILED/STATUTE	BASIS/ISSUES
CH	Harward School 82 C 1071, N.D. Illinois CD, 00-00-00	04-02-82 EPA	SEX(F) W
CH	Home Federal Savings and Loan of Elgin 82 C 0806, N.D. Illinois XXXX, 00-00-00	02-08-82 EPA	SEX(F) W
CH	Merrill, Lynch, Pierce, Fenner & Smith 82 C 2922, N.D. Illinois XXXX, 00-00-00	05-11-82 EPA	SEX(F) W
CH	Village of Schaumburg 82C1825, N.D. Illinois XXXX, 00-00-00	03-24-82 EPA	SEX(F) W
CH	University of Illinois/Urbana 82-2113, C.D. Illinois XXXX, 00-00-00	04-15-82 EPA	SEX(F) W
CL	City of Toledo Police Dept. 82-939, N.D. Ohio XXXX, 00-00-00	12-22-82 EPA	SEX(F) W
DT	Acorn Building Components 82-70638, E.D. Michigan XXXX, 00-00-00	02-22-82 EPA	SEX(F) W
DT	U.S. Tool & Cutter Co. 82-74477, E.D. Michigan XXXX, 00-00-00	11-29-82 VII/EPA	SEX(F) W
DT	Hytrol 82-72452, E.D. Michigan XXXX, 00-00-00	07-02-82 EPA	SEX W
IN	Commercial Services IP82-191C, __________ CD, 11-09-82	02-11-82 VII/EPA	SEX(F) W
DA	Richard Aston dba Astons English Bakery CA3-82-0008F, N.D. Texas SA, 01-21-83	01-05-82 EPA	SEX(F) W
DE	Courtesy Mgd. Co dba CM-West Div. 82-C-198, D. Colorado XXXX, 00-00-00	02-05-82 EPA	SEX(F) WD
HO	Clajon Gas Company A-82-CA-594, W.D. Texas XXXX, 00-00-00	11-09-82 VII/EPA	SEX(F) W
HO	Corpus Christi ISD C-82-71, S.D. Texas VDIS, 09-29-83	04-12-82 EPA	SEX(F) W
HO	Weslaco ISD B-82-86, S.D. Texas SDIS, 08-08-83	03-19-82 EPA	SEX(F) W
LA	Golden Empire Rescue F8281EDP, E.D. California XXXX, 00-00-00	05-17-82 EPA	SEX(F) W
LA	Queen Beach Printers CV82-4806MRP, __________ CD, 09-13-83	00-00-82 EPA	______ W

CASES FILED IN CALENDAR YEAR 1983*

DO	RESP/CIV NO./DISTRICT COURT/TYPE RESOL/DATE	DTE FILED/STATUTE	BASIS/ISSUES
BA	1st Virginia Bank of Tidewater 83-651-N, E.D. VA SA?, 12-19-83	09-30-83 EPA	SEX(F) W
BI	Guaranty Savings & Loan 83-0468-C, S.D. Alabama SA, 09-30-83	05-09-83 EPA	SEX(F) W
BI	Day's Inn South J83-0424(R), S.D. Miss. VDIS, 09-22-83	05-15-83 EPA	Sex(F) W
BI	Wal-Mart, Inc.dba Wal-Mart Guntersville 83-C-2268(M), N.D. Okla. XXXX, 00-00-00	09-22-83 EPA	SEX(F) W
BI	Martin Industries 83-AR 5699NW, N.D. Alabama XXXX, 00-00-00	09-29-83 EPA	SEX(F) W
PH	Westinghouse Electric 83-1209, W.D. Penn. XXXX, 00-00-00	05-11-83 VII/EPA	SEX(F) W
PH	County of Hudson 83-1669, D. N.J. XXXX, 00-00-00	05-10-83 EPA	SEX(F) W
PH	Delaware Dept of Health 83-412, D. Del XXXX, 00-00-00	07-07-83 EPA	SEX(F) W
PH	Miner's Savings Bank 83-1164, M.D. PA XXXX, 00-00-00	08-15-83 EPA	SEX(F) W
PH	Gigliotti Corporation 83-3849, E.D. PA. XXXX, 00-00-00	08-09-83 VII/EPA	SEX(F) WH
CL	Dayton Power & Light C-3-83-553, S.D. Ohio XXXX, 00-00-00	06-20-83 EPA	SEX(F) W
CL	Automatic Vendors C83-4570, _________ XXXX, 00-00-00	11-07-83 VII/EPA	SEX(F) WfPcK
DT	MESA, Local 6 _________, _________ XXXX, 00-00-00	09-30-83 VII	SEX(F) W
IN	Hendricks County Council and Prose Ofc. IP83-1148C, S.D. IND XXXX, 00-00-00	08-09-83 EPA	SEX(F) W
ME	Palm Beach, et.al. 83-123, E.D. Kentucky XXXX, 00-00-00	05-17-83 VII	SEX(F) WdmPb
ME	Memphis Mental Health 83-2493-H(A), W.D. TN XXXX, 00-00-00	06-15-83 EPA	SEA(F) W

NO	Goux Enterprises/Lacombe Nurs Hme 83-3460, E.D. La. XXXX, 00-00-00	07-11-83 EPA	SEX(F) W
SL	Von Hoffman Press, Inc. & Loc. III-B 83-4336-CV-C-5, W.D. Mo. XXXX, 00-00-00	09-16-83 EPA/VII	SEX(F) W
SL	Madison School District 83-5231, S.D. Ill. XXXX, 00-00-00	07-06-83 EPA	SEX(F) W
SL	Ste of Mo, Dept of S S, D of Crectns 83-1971-C, E.D. Mo. XXXX, 00-00-00	08-12-83 EPA	SEX(F) W
SL	Ritenour Consolidated Sch District 83-2313-C(1), E.D. Mo. XXXX, 00-00-00	09-30-83 VII/EPA	SEX(F) W
SL	Goodyear Tire & Rubber Co. 83-1469-C3), E.D. Mo. __________, 00-00-00	11-29-83 EPA/VII	Sex(F) W
DA	The Lerner Shops E P-83-CA-314 XXXX, 00-00-00 W.D. Tex	10-03-83 VII	SEX(F) W
DE	United Bank of Longmont 83-F-1338, D. Colorado XXXX, 00-00-00	07-27-83 VII	SEX(F);H WD
HO	Stone Forwarding Company G-83-257, S.D. TX CD, 09-27-83	06-20-83 EPA	SEX(F) W
HO	Stone Forwarding Company G-83-257, S.D. Texas CD, 09-27-83	06-20-83 EPA	SEX(F) W
SE	Honeywell C-83-483R, W. D. Wash SA, 05-20-83	04-06-83 EPA	SEX W
SF	Freemont Christian School C-83-2619 WHO, N.D. Cal. XXXX, 00-00-00	05-24-83 EPA	SEX(F) W

- Title VII Sex Discrimination Cases Filed Involving Allegations of Wage Discrimination ("VII")
- Concurrent Title VII/Equal Pay Act Cases Filed ("VII/EPA")
- Equal Pay Act Cases Filed ("EPA")

* This list includes cases approved by the Commission in calendar year 1984 through February 28, 1984. The name of the defendant has been blocked out if the case has not yet been filed or the Commission's field office has not yet confirmed the filing of the case to headquarters Office of General Counsel.

CASES APPROVED BY COMMISSION IN 1984*

DO	RESP/CIV NO./DISTRICT COURT/TYPE RESOL/DATE	DTE FILED/STATUTE	BASIS/ISSUES
PH	[redacted] ____, D. Del. XXXX, 00-00-00	00-00-00 EPA	SEX(F) W
[redacted]	[redacted]	[redacted]	[redacted]
PH	[redacted] ____, ____ XXXX, 00-00-00	00-00-00 VII/EPA	SEX(F) W
[redacted]	[redacted]	[redacted]	[redacted]
CL	[redacted] ____, ____ ____, 00-00-00	00-00-00 EPA	SEX(F) W
IN	[redacted] ____, ____ ____, 00-00-00	00-00-00 EPA	SEX(F) W
IN	[redacted] ____, ____ ____, 00-00-00	00-00-00 VII/EPA	SEX(F) W
SL	[redacted] ____, ____ ____, 00-00-00	00-00-00 EPA	SEX(F) W
DS	[redacted] ____, ____ ____, 00-00-00	00-00-00 VII/EPA	SEX(F) W
HO	[redacted] ____, ____ XXXX, 00-00-00	00-00-00 VII	SEX(F) W
HO	[redacted] ____, ____ ____, 00-00-00	00-00-00 VII/EPA	SEX(F) W
SF	[redacted] ____, ____ XXXX, 00-00-00	00-00-00 VII/EPA	SEX(F) W
SF	United Airlines CA 84-5070 SW, N.D. Cal ____, 00-00-00	00-00-00 VII/EPA	SEX(F) W

CODES FOR ISSUES

T -Training/Apprenticeship
Z -Segregated Facilities
Q -Qualifications/Testing
V -Segregated Locals
Y -Demotions
H -Hiring
R -Recall
L -Layoff
N -Tenure
W -Wages
D -Discharge
B -Benefits
P -Promotion
F -Referral
X -Other
S -Seniority
A -Advertising
E -Exclusion
G -Intimidation
M -Pregnancy
U -Union Representation
K -Terms and Condition
C -Job Classification
J -Sexual Harassment
I -Involuntary Retirement

a -Suspension
b -Retaliation
c -Job Assignment
d -Transfer
e -Segregated Classification
f -Recruitment
g -Disability Coverage
h -Forced Maternity Leave
i -Termination
j -Reinstatement
k -Rehires
l -Testing
m -Segregated Jobs
n -Severance Pay
o -Union Membership
p -Spousal Benefits
q -Job Categories
r -
s -Maternity Benefits
t -Breach of Conciliation
u -Compensation Benefits
v -Disqualification
z -Beard Policy

CODES FOR BASIS

Race - B/Black
O/Oriental
I/American Indian
R/Caucasion

Color -K

Sex -M/Male
F/Female

Religion
-C/Catholic
P/Protestant
J/Jewish
A/Seventh Day Adventist
G/Muslim
Y/Other

National Origin
S/Spanish American
H/Mexican
Z/Other
A/Asian

Retaliation
H/Retaliation

ADEA Age

Equal Pay
EPA

District-Office	Code
Atlanta	AT
Baltimore	BA
Birmingham	BI
Charlotte	CT
Chicago	CH
Cleveland	CL
Dallas	DS
Denver	DE
Detroit	DT
Houston	HO
Indianapolis	IN
Los Angeles	LA
Memphis	ME
Miami	MM
Milwaukee	MK
New Orleans	NO
New York	NY
Philadelphia	PH
Phoenix	PX
St. Louis	SL
San Francisco	SF
Seattle	SE

Resolution Codes

CD	-	Consent Decree
S	-	Settlement
SA	-	Settlement Agreement
DIS	-	Dismissal
STIP & DIS	-	Stipulation & Dismissal
O & DIS	-	Order of Dismissal
DEC	-	Decision
J	-	Judgment
Ord	-	Order
SS	-	Stipulation & Settlement
STIPJ	-	Stipulation & Judgment
VDIS	-	Voluntary Dismissal
SDIS	-	Settlement & Dismissal
XXXX, 00-00-00	-	The case is pending

Note: These codes do not indicate whether the EEOC has prevailed in whole or in part in the case. For example, a case in which the defendant has agreed to provide full relief in settlement may be resolved by a settlement agreement and voluntary dismissal.

Ms. **Oakar**. The Chair is going to ask permission to go out of order. One of our witnesses is unable to stay, and we discussed the schedule conflict. It's my pleasure to ask the president of AFGE, Ken Blaylock, to appear. We're very happy to have you, President Blaylock. We'd like you to introduce your associate, a member of the Executive Board of the AFL-CIO, Barbara Hutchinson.

Thank you very much for appearing, Ken and Barbara. I thank the other witnesses for allowing us to proceed out of order.

STATEMENT OF KENNETH BLAYLOCK, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Mr. **Blaylock**. Thank you, Madam Chair, and on behalf of the 700,000 members who are Federal employees of my union that we represent, a sizable number of those obviously being women, let me express my appreciation for your efforts in this area.

I think the record is clear that the U.S. Government as an employer has not lived up to the commitment which we think is constitutional, to protect the basic principles of fairness and equity and nondiscrimination in this country.

There's been a lot said by representatives of this government in justifying their so-called efforts in the area, but the statistics speak for themselves, and we'll talk about a few of those today. We've attached some supporting documentation that has been developed by our union which we would ask to be included in the record.

Ms. **Oakar**. Without objection.

[The supporting documentation follows:]

STATISTICAL BACKGROUND
OF
WOMEN IN THE FEDERAL GOVERNMENT

To appreciate the pervasive nature of pay discrimination against women in the Federal Government, we will examine some pertinent statistics which reinforce our deep concern.

1. Women comprise 32.9% of the Federal work force.

2. The average Federal salary for white-collar male workers is currently $27,570 annually. For female workers, it is $17,417. Expressed another way, women earn approximately 63 percent of male earnings.

3. Despite Title VII and Equal Pay Act, the earnings gap has been persistent, i.e., remained approximately 60 to 52 percent over the past decade. Women's earnings in private sector, as ratio of men's earnings, is currently 63%.

4. Women by grade level: 85% of all Federal white-collar women are employed in grades 1 through 9. By comparison, men in grades 1 through 9 only 39% of the total male Federal working population. The average grade for women is 6.26; the average grade for men is 8.33.

5. Pay disparities against women are more evident in the Department of Defense. Whereas the Federal wage bias mirrors existing practices in the private sector; there is even a greater bias in the Department of Defense, the largest employer of women in the Federal Government. This additional wage bias can be traced to the military view of the value of women in the work place.

   - DoD employees 246,196 white-collar women, which represents over 37% of the total Federal female workforce.
   - 91% of females in DoD are working in grades 1 through 9.
   - Less than 1% of the women in DoD are in grades 13 or above.
   - The average grade for women in DoD is 5.65; compared to 6.26 for women in all agencies.

6. The majority of women are concentrated in lower paid occupational groupings, which provide limited opportunities for advancement. In the Federal sector, there are four major white-collar occupational categories of jobs: Professional, Administrative, Technical, and Clerical. The Clerical category (embracing the lowest positions) is the only group in which women earn the approximate salary of men.

Job Categories	No. of Occupational Series	Percentage of Series Within Categories Where Men Earn More Than Women
Professional	129	96%
Administrative	153	98%
Technical	123	88.6%
Clerical	70	51%

7. Pay Equity and Collective Bargaining for Pay.

a. Postal Service

Although women comprise only 17% of total postal workforce, their earnings are only 3% less than their male counterparts. This can be traced to the gains made in the postal service because of the right to bargain over pay.

b. Tennessee Valley Authority

These Federal employees also bargain for wages. There is less than a 2% difference in pay between men and women employed in T.V.A. T.V.A. employes almost 7,000 women.

DISTRIBUTION OF WOMEN BY GRADE

	All Agencies		Department of Denfense	
GS	No.Of Women	% Women	No. of Women	% Women
1	3,151	73.7	1,031	77.7
2	17,596	76.7	6,157	79.9
3	82,539	76.7	32,423	82.2
4	170,653	77.5	55,404	79.9
5	192,072	77.1	58,824	72.5
6	89,303	72.8	23,608	69.9
7	132,926	53.9	24,704	46.9
8	30,690	52.6	3,692	35.9
9	160,837	41.2	19,118	31.4
10	28,858	37.9	699	12.2
11	163,892	24.5	12,151	18.0
12	167,398	14.4	6,799	9.8
13	117,147	9.6	1,753	5.0
14	63,847	6.8	423	2.9
15	34,619	6.5	130	2.3

Average Grade	6.26	5.65

DISTRIBUTION OF WOMEN BY CATEGORY

Professional Category

Total occupation series - 129

No. of series where men make more $ than women - 126

% of series where men make more $ than women - 97.7%

Administrative Category

Total occupation series - 153

No. of series where men make more $ than women - 150

% of series where men make more $ than women - 98%

Technical Category

Total occupation series - 123

No. of series where men make more $ than women - 109

% of series where men make more $ than women - 88.6%

Clerical Category

Total occupation series - 70

No. of series where men make more $ than women - 36

% of series where men make more $ than women - 51%

Some white-collar occupations where men make more money than women:

1.	Home Economics	- Men	$27,354
		- Women	$27,143
2.	Dietician	- Men	$23,920
		- Women	$23,832
3.	Nursing Assistant	- Men	$13,196
		- Women	$13,036

It appears legitimate to conclude that where there are female-oriented jobs, there is no bias in favor of women's pay, but when the jobs are male dominated, women earn only two-thirds of men's pay.

Mr. **Blaylock**. Your recognition of the fact that the constitutional principles of fairness and equality must be rooted in the realities of economics and our pay and classification system is both gratifying and reinforcing to those of us who struggle for these rights every day.

In fact, the labor union movement, as you know, is grounded in these same principles. While the role of the Federal Government in our society is and should be continually questioned in our democratic process, it's our conviction that the responsibility for leadership of the Federal Government in addressing widespread discrimination cannot be questioned.

We in the Federal sector should be the role model in this area as our society attempts to eliminate discriminatory wage practices. We are pleased that H.R. 5092 and 4599 have been introduced and that these hearings are being held.

We believe that the passage, implementation and enforcement of effective pay equity legislation will show the Nation the importance and the depth of the wage problem facing women workers. The case where two employees, one male, one female, both do the same work, but the male is paid more, continues to be a practice and a problem in the private sector, and is still far too prevalent in the Federal sector.

Equal pay for equal work is still a goal, not a reality. We'd like to point out that currently the entire burden of proving equal pay discrimination falls almost solely on the unions and the employees.

For instance, in AFGE we have a fair practices department with a full-time staff at our national office, and over 30 part-time and full-time people in the field.

This staff is kept continuously busy handling these types of problems on pay equity and other discriminatory practices being perpetuated by the Government as an employer.

The second type of problem we have in this area is the employment barriers. It wasn't so long ago when various professional-technical schools excluded women; when women doctors and lawyers were rare; and women who worked were relegated to a limited number of occupations.

Although many legal barriers are falling, there still exist equally imposing social barriers, including employers reluctant to hire women in nontraditional roles. In the Federal sector, many offices have women, senior secretaries, whose activity is of an administrative nature, but they continue to be classified in the clerical series, which we'll talk about a little further on.

One of the most fruitful potential sources of career growth for women in the Federal Government allows them the opportunity for seasoned secretaries to ascend to the administrative aide or assistant sphere. Yet the startling facts are that of the 27,746 jobs of administrative assistants, only 21.3 percent are held by women in the government today, and their average salary in this field is $5,000 below that of their male counterpart in the same series.

To effectively address these employment barriers, the legislation must recognize the needs for: one, revising the existing classification standards and evaluation system; two, change the ingrained attitude of managers toward women and the work they perform;

three, provide for the advancement opportunity out of the clerical job series to the administrative job series.

And the third category is pay equity, the subject of these hearings. Jobs which are predominantly held by women are undervalued by employers relative to jobs held predominantly by men.

The reason for this undervaluing is many. The channeling of women into selected occupations created an oversupply of labor for these positions, thus depressing the wages. Once these relative wage patterns were established, they became very difficult to break.

And even today, employers will respond that they've never paid their secretaries well. The Federal sector, which sets its wages based on wages in the private sector, mirrors the employment and wage patterns in the private sector.

Our attempts to break out of this relative wage pattern to date has failed. The responsibility of the Federal Government to set the pace in achieving pay equity directly conflicts with the current pay and classification systems, which transfers the discriminatory practices of the private sector into the Federal sector.

You have in the Federal sector the same economic conflict that is used as an excuse in this area as exists in the private sector. In the private sector the discrimination, the inequity exists purely for profit purposes.

The company, the employer in the private sector pays anybody as little as they can, male or female, but because of the practices and attitudes that exist they've been able to pay less to the female workers than they have the male.

It's for profit. In the Federal sector, it's in the guise of keeping the cost of government down, but the basic reason is the same. They work people. They exploit people. They do it cheaper by saving on the salaries, and that's what's happening in the government today, as everybody on this Hill and down on 16th Street is strangling with this Federal deficit as we move into a political year.

Ms. **Oakar**. As if Federal employees were responsible for the deficit. You get blamed for it all, don't you. They blame Federal employees for the deficit problem, when we know it's so many other extenuating circumstances.

Mr. **Blaylock**. Well, we're used to—male and female worker alike—we're used to being used as scapegoats in the Congress for the administration's inability to manage the affairs of government. You're 100 percent right.

You know, I see where the Governor of Virginia says our Federal retirement program is a major cause of the deficit. So we're used to that, but we don't like it, and we'll continue to work to resolve it.

And this is one of the areas where the discrimination definitely comes out.

We've long been concerned with the inequalities in wages between the female and the male workers. Despite title VII of the 1964 Civil Rights Act and the Equal Pay Act, the earnings gap between men and women in the Federal sector has remained virtually constant over the past decade, as some of the attached background material I referenced earlier shows.

Currently the average salary for white-collar male workers in the Federal sector is $27,570 per year, while that of the female worker is $17,417. In translating the earning gap to grade levels, 85 percent of all Federal white-collar women workers are employed in grades 1 through 9, while men employed in the same grade levels represent only 39 percent of the total male work force.

A more specific example of the problem of pay equity in the Federal Government is the Department of Defense. A review has shown that the Defense Department employs 246,916 white-collar women. However, 91 percent of these women are working in grades 1 through 9, while less than 1 percent are employed in grades 13 and above.

In fact, women in the Defense Department have an average grade of 5.56, while the average grade for women in all agencies is 6.26. However, once again the average grade for male workers is at 8.33, and it outdistances that of all female workers.

Now, if you equate that to dollars, that grade gap of an 8.33 and that of the 5.56, Madam Chair, that equates to $1,000 per year difference in salary. Again, I would just reemphasize the three areas that have to be dealt with. One, the blatant discrimination; two, the employment barriers; and three, the systemic imbalance built into our classification and pay system.

In the Federal Government, the majority of women are concentrated in the lowest-paid occupational groupings, which provide limited opportunity for advancement. Despite the Federal equal opportunity recruitment program, affirmative action, upward mobility programs, Federal women workers continue to earn less than males.

In all four of the major white-collar occupational categories of professional, administrative, technical and clerical, males earn more than females. In fact, in the professional category, which is a total of 129 job series in our classification system, in 126 of those series men earn more than women workers.

In the other three, they about balance out. In the administrative categories, which has a total of 153 job series, again, in 150 of those series men earn more than women. Again, only three where they balance.

And to really rub salt into the wound, the one series that is considered the occupation that is primarily female, out of a total of 70 job series in the clerical field, men earn more than women in only 36 of those job series. But that says even in the clerical field, over half of the series classifications, men still earn more than women in what's considered to be a predominantly female occupation.

The problem in the Federal Government is grave, and it can't be addressed solely by relying on the civil rights laws which have been enacted. The payment of wages for a particular job in the Federal Government is directly linked to our classification system.

It's evident from the statistics we've cited to the committee today that the job series which are predominantly occupied by females are paid less than those occupied by males.

When an agency establishes a job, many factors determine the grade level. A major distinction determining grade level is whether a task to be performed in a job is substantive versus being procedural.

Further, many jobs occupied by women cannot be used as credits toward other job categories. A frequent and recurring problem in the Federal Government is dead-end jobs. Once the clericals reach the top grade level in the clerical category, there is no credit given toward job skills acquired in the clerical job to a job in the professional category or the administrative category, as an example.

For example, a medical records clerk in the Federal Government cannot receive credit for knowledge and experience gained in that job to qualify for any entry level professional job categories in hospital administration. In short, there is no mechanism for horizontal movement among the four major job categories in the Federal sector and in that classification system.

Mechanisms can be built into the Federal classification system to eliminate the gross disparities which our statistics reveal in the Federal Government today. The Office of Personnel Management which is responsible for the classification of positions and the regulations which apply to this area has made little or no effort to erase these disparities.

I see by the news accounts that Dr. Devine appeared before your committee yesterday and basically said that there is no need for further legislation, there is plenty of law on the books to implement and enforce this fairness and eliminating this inequity.

Well, I hope the committee asks Mr. Devine to answer to some of the statistics, which come out of OPM by the way, that we are citing. And I can only think of excuses that could be made, not reasons, because that is his responsibility and it is the Government's responsibility. The facts are here, Madam Chair.

I would like to point out that the way in which OPM chooses to construct and publish a standard has a deep effect on pay equity and career opportunities. As an example, Federal librarians, predominantly women, have just lost a hard-earned wage benefit. The master's degree, which has commanded a GS-9 recognition, now earns only a GS-7 because of an impossible 60 credit-hour requirement that has been imposed by OPM despite present university practices of accrediting 32 to 36 hours for the master's degree.

Another example where GS-6 level can be an important bridge in the clerical category toward entry into the administrative management sphere, it is damaging to career opportunity. In fact, there is no career opportunity because they have now dropped those levels from the mail and file clerk standard and the correspondence clerk standard. There is no GS-6, there is no bridge for those categories at all.

Ms. OAKAR. This was adopted in those two cases in recent months.

Mr. BLAYLOCK. Yes, ma'am.

Ms. OAKAR. And they are predominantly female occupations, librarians and the clerical workers.

Mr. BLAYLOCK. Not only are they not attempting to build bridges, in accordance with the current law to develop affirmative action plans and what have you, they are eliminating those few that were there, and that has happened during this administration.

In the technician sphere where GS-5 is the usual journeyman level, it is just as damaging to have depicted in the licensed practical nurse standard a benchmark only for GS-5 work in the psychiatric ward and to have omitted the more typical GS-5 work in a general ward setting. Both downgrading and denial of promotion opportunity have resulted from this calculated omission. Again, in the name of reducing the cost of Government, these actions are now being taken in regards to our classification system, which was bad enough to start with.

To enhance equity for women through the position classification system, we urge the Congress instruct OPM to review each of the 22 major families of occupations in our classification system to determine which series in them could yield springboards of career movement vertically as well as laterally to eliminate the deadend situation and also to create career opportunity and take advantage of the skills learned by women in these series, in these classifications that now exist that do qualify them to move into and produce more actually. It is much better utilization of human resource if you get right down to good management concepts.

Just as opportunity has been provided, by the way, for accounting technicians who meet certain experience/education requirements to become accountants and for engineering technicians to become engineers, both male dominated, every job family should have those kind of bridges identified in them.

We urge also that all clerical standards include at least the GS-6 level because that is a key or a bridge to further career growth in those occupations.

Pay equity has been achieved in those areas where unions have bargained for pay on behalf of workers. Two examples—keep in mind the regular system that we are taking about and Mr. Devine has a responsibility to see that progress is made in eliminating these discriminations we transferred in from the private sector into Government under the guise of comparability—but in only two instances where we have made progress since the laws were passed has been in the two areas where OPM, the centralized agency really does not have that much say so. And the problem has not been eliminated there, but the statistics show that there has been progress. U.S. Postal Service is an example.

Now, the gap between the male/female worker is at 3 percent. Haven't eliminated it, but using the same sets of standards to develop the statistics for the rest of the Federal sector.

TVA [Tennessee Valley Authority], that gap is now 2 percent. So, in those two areas where the centralized OMB operation, centralized OPM operation does not have jurisdiction there has been progress made because there was employee involvement in those areas.

We support the principles of both H.R. 5092 and 4599. Again, we would like to express our appreciation for the introduction of those bills and holding the hearings. We maintain that the Federal Government should be a role model for employers, that the Federal Government has a responsibility to address problems of fairness and equality in our Nation. And that responsibility dictates that the Federal Government take the lead in eliminating wage disparities between men and women.

I would like to conclude my remarks with a list of very specific recommendations.

First and foremost, we think it is incumbent again upon Congress to direct the executive branch. We think there is a shortcoming in your proposed bill where you ask the very people who have created the problem to do a study. We think the facts are here. We think Congress should direct the administration in your legislative—in the language of this bill. We think they should be directed to again correcting the problem and report back to the Congress on a regular basis as to how much progress is being made. We think it has been studied long enough and asking OPM to go study it when they have set here and told you there is no problem, it's like asking the fox to guard the hen house and we have seen too much of that.

We are concerned specifically——

Ms. **Oakar.** Ken, you might want to note that yesterday Dr. Devine announced that OPM was conducting their study. OPM started a study and I asked him if they were in any way inspired by our committee's work. They denied that. But, it was coincidental that the study just began on the day that we were going to invite him to testify.

Mr. **Blaylock.** Well, we all, obviously, went to a lot of different schools than quite a few of these people and, you know, they have studied it to death. We come out with different equations and the hard facts are there.

Very specifically, we think section 4(b) (1) and (2) of the bill will not do the job because there again the problem I just mentioned. So, we would recommend very strongly you seriously consider some changes in there.

Second, one possible approach, we suggest that the legislation instruct the Department of Labor to at this point identify the deficiencies in the area of the classification, job standard, career advancement, training and job evaluation which has led to the existing wage discriminatory practices. We think they can be identified quite easily, and once they are identified, then we think we should—then the legislation should require correction.

Third, we further recommend that the Department of Labor be mandated to set the standards for the elimination of the identified deficiencies.

Fourth, legislation should establish a strict timetable for the identification of the deficiencies and the establishment of the standards.

Fifth, the agencies should be given 1 year to meet the established standards and eliminate the deficiencies, the Department of Labor should be required to report to the Congress on a periodic basis on the status of the agency's implementation plans.

Sixth, the legislation should establish the right of employees and their representatives to seek judicial enforcement of the Department of Labor standards. Employees should be entitled to relief, including backpay and any other such remedies which would bring the agencies into compliance with the Department of Labor standards.

Seventh, legislation should be properly funded to insure implementation and not hollow promises.

Eighth, again, specifically section 2(b)(1) should be amended by inserting the words—after the word "techniques," the words "including occupational and position comparisons." It is not specific in what it is requiring to be done there and we think there it has to go to the standards themselves, the classification standards.

Ninth, we have a set of minor changes which we believe would strengthen the findings and purposes of the two bills.

Section 2 of H.R. 4599. Section 2(a)(5) should be amended to read: "The contributions of female workers are vital to our economy, and the continued existence and tolerance of these discriminatory wage-setting practices and wage differential prevent full utilization of the talents, skills, experience, and potential contributions of female workers and result in the special exploitation of those workers."

Section 2(a)(7) should be amended to read: "The aforementioned problems and conditions, which are present in the United States generally, are also present in the Federal Government, because the Federal pay and classification system merely transfers the private sector discriminatory practices into the Federal sector."

Section 2(b) should be amended to read: "Recognizing that the elimination of discriminatory wage-setting practices and wage differentials is in the public interest, and that the elimination of such discrimination is the established responsibility of the Federal Government."

Madam Chairman, that concludes my remarks. Barbara would like to expand on some of the points that we make here. As you know, she is the director of our women's program and our fair practices department. She is a member of our executive council, and also a member of the AFL-CIO Executive Council, and we are quite proud of the progress we have made in our own union and our people are proud of the effort we are putting into this kind of a problem, and Barbara has sure been in the forefront of it.

So, Barbara.

STATEMENT OF BARBARA B. HUTCHINSON, DIRECTOR, WOMEN'S DEPARTMENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Ms. HUTCHINSON. Madam Chairwoman, I want to thank you for having us appear before you today and for holding these hearings and introducing these bills. This is a very grave and critical problem for Federal women workers and the breath of the problems is illustrated by the fact that currently we have class actions pending in the administrative stages against the Department of Defense and the Social Security Administration based on sex.

Those cases have been in the processes for approximately 3 years, each of them. I think that that is just some indication that there are some severe problems out here for women, and we also have any number of cases on individuals that we are representing for our members. We are also training our members in equal employment opportunity processes and at AFGE we have been negotiating contract language on affirmative action, sexual harrassment, and upward mobility programs.

And let me kind of give you some reason why we went to collective bargaining for these processes. The reason why we went to putting specific language in our collective bargaining contract is because we were not getting anything at all in terms of responsiveness out of the Federal EEO programs. Our members cannot get through the complaint processing.

The Federal employees in terms of discrimination matters have been under continuous attack. Even though the EEOC received funding for new hires in the Federal sector for the affirmative action compliance program in the previous administration, this administration has cut the staffing of that program so that it is impossible to perform compliance reviews due to lack of staff.

The Chicago——

Ms. OAKAR. If I could just interrupt. You heard the EEOC criticize one of my bills based on the fact that it would involve more hiring of staff. If they had not proposed all those RIF's in that area of law enforcement, they would not even use that as a factor.

It is interesting that the Reagan administration has been very selective about where they want the cuts. Drastic reductions were made in the Education Department's WEEA program. It is interesting it has been in that division of the EEOC and so on and so forth.

The Chair would like to observe that it seems as if the Defense Department has not been the area where they, in terms of weapons, have been cutting. You do not have to comment because I know you represent Federal employees from every agency.

In personnel related to civil rights issues, they have cut across the board. I thought it was ironic that he would use that as his criticism of the bill, the very weak argument in my judgment.

Thank you.

Ms. HUTCHINSON. One of the problems that we have and you know we represent the employees of the EEOC, and we have been monitoring how many attacks have been taken on affirmative action and the affirmative action compliance units for the Federal sector, in fact, the Chicago District Office of the EEOC has only three employees with no superviser and no clericals to cover Federal facilities in seven States,

Now, these employees are supposed to review the Federal agencies' affirmative action plans to see that they are being implemented. In fact, there are no reviews being done. They have assigned no travel funds to these units and, so, I agree with you that what the chairman says, the facts belie what his statements are.

In addition, there is another plan on the drawing boards that is under the purported EEOC reorganization that would merge these affirmative action units into the hearings unit so that the people who were formerly doing hearings for Federal employees would be doing both things; that they are going to merge these units together so you would not have separate units, you would have the affirmative action plans being reviewed by the same people who were doing the hearings.

We had another new thing that was introduced under this administration in the EEOC regulations. As you know, the way the 1978 Civil Service Reform Act was set up an employee had the right to make an election to choose whether to go through the EEO processes or to go to the Merit Systems Protection Board if they had a case that was appealable to MSPB.

The EEOC under Chairman Thomas issued a new regulation which arbitrarily gave the EEOC the right to determine where a person would file a complaint for processing.

We have opposed that particular regulation. We commented on it. We were opposed to it, and it was implemented in two cases that we have right now in our administrative process and we have filed a petition in those cases to try to solve that problem.

We also have a third case that we were notified of this week where the MSPB actually refused to hear the person's complaint and referred it back to the EEOC, putting our member Federal employees into a legal morass: Where do they go? How do they get discrimination problems taken care of?

We do not feel the EEOC is doing its job in relation to Federal employees and we think that that is an indication of their commitment to enforcement of the rights of women and I think that their regulations and their records speak for itself.

In the area of employment barriers, again, the Federal Government has done little or nothing to eliminate and correct the problems.

As our statistics show, women are being held in low-paying jobs with limited career opportunities for growth. The limited opportunities available under affirmative action, and upward mobility, are clearly not enough.

We believe that this legislation should require the correction of the problems in the classification system which have become ingrained.

For example, a keypunch operator position is defined as routine work, and falls in the lower range of the general schedule. Yet, a keypunch operator in any agency must have knowledge of the agency laws, rules, regulations, and operations in order to properly perform the job.

This is particularly true of the Social Security Administration, where data entry operators must enter claims processing information. Our women members are currently being assessed errors if they enter information which is incorrect in accordance with the regulations; yet, they receive very few points in the job evaluation system for knowledge of laws, rules, and regulations.

Another neglected evaluation factor is stress. Our claims and complaint processing members in the Veterans' Administration, the Social Security Administration, the Equal Employment Opportunity Commission, and other agencies, receive little, if any, points for stress even though they must constantly respond to citizens, and make determinations on their requests 8 hours a day.

In fact, in the Equal Employment Opportunity Commission in terms of the intake people, people who take in complaints from people who come to the agency, the EEOC has now made a request to downgrade the job to a GS-7. Their rationale being that it can no longer support a GS-9 because it is routine work.

They said that they were making that determination at the direction of OPM, and because they said the person does not have to do anything but process paper. In fact, an intake officer in the Equal Employment Opportunity Commission must know the jurisdictional requirements of title VII. They must know all of the laws and regulations on age, equal pay, and yet they are not going to be given any credit based on the statement of the chairman of the Equal Employment Opportunity Commission.

Ms. **Oakar**. I find this an interesting example.

You mean that within the EEOC framework, they are requesting for a downgrading of what are obviously going to be female positions?

Ms. **Hutchinson**. Yes, they are. Many of those were bridge jobs for clericals to go into.

Ms. **Oakar**. Well, if that doesn't demonstrate one of the severe ironies of this administration. That's about as blatant, I think, as——

Mr. **Blaylock**. It is this centralized system, the very point you made a moment ago on the manpower standards where they take across-the-board cuts and they apply it to every agency without looking at the impact at all. And the same thing has happened to classification standards, they don't care where the people work.

If it's a clerical series, it's a clerical series. All women anyway so don't worry about it, and cut it, and drop it, and wherever it impacts it. She's talking about these intake review officers that have to have the knowledge of the regulations, the law, the jurisdictions, and that is—in the factor evaluation system you're given credits in technical and professional field for having to have that knowledge. You're not given any credit in the clerical field for having to have that knowledge to make an evaluation.

And you can't address this problem without attacking that classification system. That is a big part of the barrier.

Ms. **Hutchinson**. That is currently going on as part of the reorganization negotiations. So that I take issue with Chairman Thomas. But related and acquired experience and knowledge is another employment barrier for women. A clerical position, no matter what the skills acquired, and knowledge required, can rarely be used to bridge the gap to the professional and technical series except at the lowest level.

In fact, a senior secretary in Federal employment would be hard pressed to convert her acquired knowledge and experience to a professional job in the administrative office of an agency without receiving a college education.

This brings us to a third barrier, that of training. Our women members are constantly refused training because the regulations require that the training be directly related to your job. Therefore, clerical and personnel clerks cannot take a course in personnel administration because it is not related to her job as a secretary.

This is repeated throughout all the job categories, and this is another area when we have gone into negotiations with agencies; where we have had a terrible difficulty. It does not make any difference how you define the language, and how you define what is considered training related to the job, they end up when someone makes a training request—and primarily these are women—they end up denying the request because they will say "that is not related to your job because you are a secretary."

And so I think that that's a very critical area because they say women don't want training, they won't take it. Anybody who is a clerical, who wishes to get education, doesn't want to take another shorthand course, and that's a fact.

We believe that these are several areas in which the Federal classification system, and personnel system, is continuing to hold women in lower paying jobs. We do believe that these barriers can be eliminated. Job classification standards can be redrawn to reflect the proper skill, effort, and responsibility. Bridges can be provided for the jump from clerical to technical and professional.

Finally, the expansion of training regulations will do much to upgrade the Federal working women. We urge you to adopt the recommendations set forth in the testimony of President Blaylock, and to uphold and enforce the principles of equal pay for work of comparable value as set forth in the purpose of the 1978 Civil Service Reform Act.

And thank you.

Ms. **Oakar**. Thank you, Barbara, and Ken. You have given very excellent examples of the types of discrimination that exist. That's why we think the Federal Government should serve as the benchmark for the country in the manner in which it relates to its employees. Federal employees already are 21 percent behind the private sector. So discrimination just makes it worse.

The Chair has said many times that this is not a confrontation between men and women. We do not want to see any salaries of men lowered. Yesterday in Dr. Devine's testimony he indicated that he believed that much of the wage gap in the Federal Government was due to the overclassification of male positions. I suppose that's an attempt to make it a male-female confrontation.

Do you think that's correct?

Mr. **Blaylock**. No, I don't think it's that the jobs are overclassified. You're talking about a compensation system, and basically what has happened, both in the standards for the classification system, as well as the process for determining pay, the Comparability Act, we are simply transplanting discriminations that exist in the private sector into the Federal sector.

And there has been a real effort, as you well know, the comparability process has been totally aborted. We do not have comparability in the Federal sector anymore with the pay caps and the artificial injections that's going into that.

The next area that you can best reduce cost of Government, when you're trying to take it off of the hides of the workers, is to move into the classification system, and there has been continuous action, and increased activity by this administration to reduce the grades of all these standards.

Now, they run a survey of less than 400 positions. Out of the 2½ million positions we have in the Federal Government they did a survey of less than 400, and come up with these figures that only 11 percent were undergraded, and that like 78 or 68 percent were overgraded. And there's nothing statistical about that.

You're not only dealing, I think, with the system and the automatic barriers that had been built into the system, you're dealing with a philosophy and an attitude, just like the activities going on with EEOC.

As you well know, when that agency was established we had a Republican administration in power at that time, and they did not want that agency. They've never wanted that agency looking over the shoulders of the corporate structure, or over the shoulders of the rest of Government in that particular area. And there has been a continued effort to torpedo that agency's ability to perform.

We simply say to the Congress "it's time you built enough standards into the law that they can't help but perform." And it's time that if Congress will build the standards into the law, and we'll damn sure fight for that, and just give us access to the courts. If the Federal Government won't enforce it give us access to the courts on behalf of the employees. And it's a long drawn out process, and a costly process, but we'll enforce it.

Ms. **Oakar**. Well, I think you present a very important challenge to us. Let's hope we can someday fulfill that challenge. I think that's what the spirit of the legislation is all about.

Thank you very much for appearing.

Ms. **Hutchinson**. Thank you.

Mr. **Blaylock**. Thank you.

Ms. **Oakar**. I'm very, very grateful.

Our next witness is going to be Mr. Moe Biller, who is the president of the American Postal Workers Union, accompanied by Ms. Josie McMillian, the president of APWU's local in New York City, a city that has been in the headlines recently.

We're very pleased to have both of you here. Moe, we know you won a historic case yesterday in the courts, on another issue that relates to everyone's democratic right to vote. We're very delighted with that decision.

We want to welcome you, and Josie, here today. Thank you very much for being here.

STATEMENT OF MOE BILLER, PRESIDENT, AMERICAN POSTAL WORKERS UNION AFL-CIO, ACCOMPANIED BY JOSIE McMILLIAN, PRESIDENT, NEW YORK METRO AREA POSTAL UNION

Mr. **Biller**. Thank you very much, Madam Chair, and we are delighted to be here, and thank you for your kind comments concerning the restraining order on voter registration.

I just want you to know, Madam Chair, I'm delighted to testify today on behalf of the American Postal Workers Union AFL-CIO, and to introduce Ms. Josie McMillian, the president of our 20,000 member New York Metro Local, and a leader for women's rights within the Postal Service.

Women comprise one-third of the workers represented by the APWU. Our union has a fundamental interest in promoting pay equity within the Federal and Postal Service, and ultimately for all public and private sector employees.

Madam Chair, your efforts as an advocate for women's economic independence are most commendable. Your leadership in the Congress to promote economic opportunity for working women and financial security for older women, and women who work in the home, has been consistent and forceful. You are indeed a bright light for working women whose interests have been overshadowed by the antifeminist attitude within the Reagan administration.

APWU fully supports your legislative efforts to address these issues by introducing H.R. 5092, and H.R. 4599.

I also express my appreciation to the very fine Congresswomen who you mentioned in your statement yesterday, Congresswoman

Pat Schroeder, and Congresswoman Gerry Ferraro from my own community.

By the way, it is the city that never sleeps, as you know.

I note in your statement, Madam Chair, toward the end——

Ms. **Oakar**. Mr. President, you just remember you were born in Cleveland.

Mr. **Biller**. Yes, well, I was conceived there. You know that. [Laughter.]

In any event, I note in your statement you say that the President declined your invitation, and Justice and Labor refused to send witnesses.

And then you add, sad as it is to say, their silence is illustrative of the inattention that this administration has given to an issue that affects every woman in this country.

And I would like, most respectfully, to quote from Dante's Inferno for those who do remain silent, "that the hottest places in hell are reserved for those who remain silent during a moral crisis." And I don't choose to share that podium.

APWU has been in the forefront of previous fights on behalf of working women. Since the Postal Reorganization Act of 1970, we have pushed strongly for affirmative action, training, and upward mobility for female and minority employees. The results of our efforts, we believe, are impressive.

Not only are the major Postal Service crafts well integrated by sex and by race, but the wage gap, so apparent in every other industry, and throughout the public sector, is virtually nonexistent in the Postal Service. In fact, we can argue that to look at the Postal Service workforce integration and comparable wage rates between men and women is to look at pay equity at work. And I suspect that the collective-bargaining system has a good share in that.

In most public and private employment, workforce segragation is still rampant. In the Federal Government (excluding postal) for example, over 85 percent of the clerical jobs are held by women, while women hold fewer than 20 percent of jobs in the technical, administrative and professional categories. Even within specific occupational series, women are still concentrated in traditional female jobs. Women are over 95 percent of public health nurses, 85 percent of library technicians and over 90 percent of personnel clerks. These are just a few examples of jobs in the Federal sector which have always been viewed as women's jobs and thus, have always been undervalued in the general marketplace.

As you know, by public law, the Federal Government's general schedule wages basically reflect wages for comparable jobs in private industry. The Government's system, therefore, incorporates market based wage discrimination into its classification system. This concentration of women into the lower paying traditional female jobs is largely responsible for the wage gap between men and women. Women do slightly better in the Federal sector than in private industry, but on the average still only earn two thirds of the wages of their male counterparts.

The difference within the Postal Service is illuminating. The postal service, which is well integrated, is the only major industry where there is no wage gap between men and women or whites and blacks.

A study by Joel Popkin and Martin Asher, that is footnoted appropriately, compares wages in the Postal Service with 12 major industries. This study, which I will submit shows that:

First white male postal workers are paid comparable wages to white males in other industries.

Second females and blacks in the Postal Service are paid higher wages than similarly situated female and black workers in other industries.

Third the Postal Service pays comparable wages for each skill level regardless of sex or race.

Fourth the Postal Service is the only industry studied where there are not statistically significant wage differentials between blacks and whites, and men and women. In every other industry women and blacks are paid less than white males for comparable work.

Because the Postal Service does not follow the discriminatory wage practices so evident in the marketplace, it can, indeed, be used as a model for pay equity. And I'll point out some concerns in a few moments.

Popkin also points to the positive impact of unionization on pay equity. He suggests that a high degree of unionization in an industry may lead to the development of a formal industrywide scale. Such a scale may have the added feature of reducing wage differences among men and women, and whites and blacks.

It is clear, in fact, that much of the recent movement for pay equity has come about at the insistence of unions during collective bargaining negotiations.

We don't mean to imply that all is perfect within the labor movement, or within the Postal Service. Most of the gains by women and minorities have taken place over the last decade. Because of seniority protections, the statistics are less favorable in the supervisory level. It will take the aggressive enforcement of affirmative action programs for women and minorities to fully integrate the management area.

Madam Chair, our current President tries to speak to the concerns of working women, but his actions, or more pointedly the inactions of his administration, speak a louder message. Affirmative action and pay equity are opposed at the highest levels of the executive branch. Therefore, it is imperative, now more than ever, for the legislative branch of Government to step in and to take assertive action.

And before I go further, I just want to express a concern based on a very significant and important meeting yesterday of Board of Governors of the U.S. Postal Service, who have come up with four points.

And point No. 2 says that the benefits to labor exceed comparable benefits in private sectors. And they want the negotiators for the Postal Service to seek correction of this situation.

First and foremost I'm going to see whether or not this has any basis for fair labor charges. But a greater concern, is that after years of struggle and collective bargaining, women and minorities seem to have reached some comparability and now administration appointees want to push that down. And that's what they're obviously directing to their negotiators well in advance.

You may note, and I don't want to get into the collective bargaining process, until now it's been relatively quiet, unlike past years, because there has been no rhetoric by the Postmaster General. I want to commend them for it.

But now his bosses—the Board of Governors of the Postal Service—have decreed on their own in advance that this should not continue to be a fact.

So I have to raise very, very strongly the question of their attitude both to women and minorities. In fact, there are efforts now to downgrade positions based on the advent of mechanization. I am concerned that in an industry where pay equity has been achieved, or close to it, that, again, there are efforts to remove that. So our struggle really continues.

If I may, I would now like to turn——

Ms. **Oakar**. Could I just stop and ask you one question about that?

Mr. **Biller**. Sure.

Ms. **Oakar**. Is that somewhat unprecedented that the Board of Governors would make that kind of a recommendation?

Mr. **Biller**. To my knowledge, it is, Madam Chair. As a matter of fact, in the past they have been quiet. It has been echoed and stated that they're going to take a more active voice in whatever the negotiations are. I suspect technically that they have a right to. They are the Board of Governors. But if they're going to negotiate, I suspect they have a right to set the parameters. I don't know.

But certainly at this point, it becomes an interference in a collective bargaining system, which is important to us in the very narrow sense. But what is far more significant is the fact that in an area where we believe we have at least achieved some measure of appropriate equality, now the battle goes on to remove that. How can these people claim a sensitivity to this?

I will pick up with my prepared statement.

The U.S. Government must take an active role to promote pay equity initiatives as a tool to end sex discrimination. It is a shame that the Reagan administration has chosen to oppose this issue in the courts and in the executive branch. We are told by the Assistant Attorney General at the Department of Justice, William Bradford Reynolds, that the Justice Department opposes the landmark legal victories for pay equity (Gunther versus County of Washington, and AFSCME versus State of Washington) and will act to overturn them. It is interesting to note that President Reagan does not share the view of the courts that sexbased wage discrimination is no less illegal than wage discrimination based on race, national origin, or religion.

The current Chair of the EEOC has stated that the EEOC is unable to investigate wage discrimination charges because the agency has not yet developed a "policy" on the subject.

The National Committee on Pay Equity concluded, after reviewing the evidence, that the EEOC's litigation of wage discrimination cases during the Reagan administration is nonexistent. There is no organized effort to identify and bring wage discrimination cases; there is no litigation strategy and no one identified in charge of any centralized program. There appears to be a pattern of wholesale dismissal for no cause of wage discrimination charges in the field; and even when charges are forwarded to headquarters, there is no action taken.

Furthermore, the Director of OPM has indicated that the Federal Government's job classification system has never been studied for sex bias. Yet OPM applauds its own system as a fair, albeit judgmental, job evaluation tool. APWU feels that the evidence of wage discrimination within the Federal Government demands that such a study for sex bias be done.

Two initiatives on pay equity require immediate attention. First, with regard to the Federal sector, there should be a review of the entire position classification system for sex bias with recommendations for implementing changes to eliminate wage discrimination practices. Such a plan is embodied in H.R. 4599, the Federal Employees Pay Equity Act of 1984. APWU fully supports the intent of this legislation and will eagerly support the bill with one modification. OPM should not be directed to unilaterally conduct a study of its own system and make recommendations for changes. For any study and subsequent recommendations to have the support and trust of the workers it will effect, it must have the active participation of those workers in the process, and it must be carried out by an unbiased organization. APWU recommends that the study be twofold. The first phase would seek to define the problems, set the standards and requirements of the study. Through their unions and other employee organizations, workers should have steady input to this process. Then, once the parameters of the study are determined, the committee or the Congressional Research Service should work with an independent job evaluation firm to carry out the study. Periodic reports should be made to employee representatives and congressional oversight committees. Employee groups should also be involved in the acceptance of recommendations for changes. Madam Chair, we hope our your committee will give full consideration to this recommendation.

The second major initiative must come from the EEOC, DOL, and other agencies in enforcing existing wage discrimination laws. We strongly support H.R. 5092, the Pay Equity Act of 1984, which addresses this issue. Since the EEOC has ignored its obligation to pursue enforcement of antiwage discrimination laws and has even ignored its own interim guidelines to accomplish this, strict reporting requirements and congressional oversight are obviously needed.

With regard to the Federal Government classification study (Section 3), we would make the same recommendation as before, requiring union participation in the process.

Madam Chair, APWU is proud to say that the unionized Postal Service does not suffer the same sex-based wage discrimination, so evident in other public and private sector organizations. However, the problem of discrimination wherever it exists, will be actively pursued by our organization. It is in this spirit of collective advocacy, that APWU offers its full support and congratulations to you for your leadership on pay equity. Thank you very much for inviting us to testify. We look forward to working with you on this important legislation.

And, if I may, I'd like to turn now to Ms. McMillian for specific comments on the legislation. Ms. McMillian is also a leader in CLUW, the Coalition of Labor Union Women, and I'm proud to say a very significant leader in the labor movement, and also a leader in POWER, which is Post Office Women for Equal Rights in our union.

Ms. **Oakar**. It's a pleasure to have you here.

Mr. **Biller**. Thank you very much.

Ms. **McMillian**. Thank you, Mr. Biller and Madam Chairman. This is of great importance to our members.

As you know, we have antidiscrimination laws on the books of this country. What we don't have is any positive action on the part of the Reagan administration, whose job it is to enforce these very laws.

For instance, we are told by the Assistant Attorney General that the Justice Department opposes the landmark legal victories for pay equity, and will act to overturn them. President Reagan and this administration do not share the views of the court that sex-based wage discrimination is illegal.

The current Chair of the EEOC has stated that his staff is unable to investigate wage discrimination charges, because the agency has not yet developed a policy on the subject. The National Commission on Pay Equity concluded, after reviewing the evidence, that the EEOC's litigation of wage discrimination cases during the Reagan administration is nonexistent.

There is no organized effort to identify and bring wage discrimination cases. There is no litigation strategy, and no one even identified as being in charge of any centralized program. There appears to be a pattern of wholesale dismissal. For no cause of wage discrimination charges in the field. And, even when charges are forwarded to the headquarters, there is no action taken.

Furthermore, the Director of OPM has indicated that the Federal Government's job classification system has never been studied for sex bias. Yet, OPM applauds its own system as a fair job evaluation tool.

The American Postal Workers Union believes that the evidence of wage discrimination within the Federal Government demands that a study be undertaken to specifically identify the sex bias in Federal employment.

Two initiatives on pay equity require immediate attention. First, with regard to the Federal sector, there should be a review of the entire position classification system for sex bias, with a recommendation for implementing changes to eliminate wage discrimination practices. Such a plan is incorporated in H.R. 4599, the Federal Employee's Pay Equity Act of 1984. APWU fully supports the intent of this legislation, and will eagerly support the bill, with one modification. OPM should not be directed to unilaterally conduct a study of its own system and make recommendations for changes. For any study with subsequent recommendations to have the support and trust of the workers it will effect, it must have the active participation of those workers in the process. And, it must be carried out by an unbiased organization.

APWU recommends that the study be twofold. The first phase would seek to define the problem, set the standards and requirements of the study. Through their unions and other employee organizations, workers should have steady input into this process.

Then, once the parameters of the study are determined, it should be contracted out by the committee, or the Congressional Research Service, to an independent job evaluation firm which would report periodically to OPM, employee representatives, and congressional oversight committees. Employee groups should also be involved in the acceptance and recommendations for changes.

Madam Chair, we hope your committee will give full consideration to this recommendation. The second major initiative must come from the EEOC, the Department of Labor, and other agencies, in enforcing existing wage discrimination laws. We strongly support H.R. 5092, the Pay Equity Act of 1984, which addresses this issue.

Since the EEOC has ignored its obligation to pursue enforcement of antiwage discrimination laws, and has even ignored its own interim guidelines, strict reporting requirements and congressional oversight are obviously needed.

With regard to the Federal Government classification study, section 3, we'd make the same recommendation as before, requiring union participation in the process.

Madam Chair, APW is proud to say that the unionized Postal Service does not suffer the same sex-based wage discrimination so evident in other public and private sector organizations. However, the problem of discrimination, wherever it exists, will be actively pursued by our organization. It is in this spirit of collective advocacy that APW offers its full support and congratulations to you for your leadership on pay equity.

Thank you very much for inviting me to testify. We look forward to working with you on this important legislation.

Ms. **Oakar**. Well, I want to thank you very much for your very fine testimony and your leadership, not only in your own union, but in the CLUW and other organizations.

Let me ask, since you do serve as a kind of model, you've mentioned there are some problems regarding pay equity in the Postal Service but that, overall, there is not the inequity that there is in other areas of the Federal work force. Do you attribute this to the fact that you do have a degree of collective bargaining? Do you think that's one of the areas?

Mr. **Biller**. I attribute this to collective bargaining, and our concerted efforts in the area of affirmative action. Affirmative action can have many directions, and particularly during the collective bargaining process.

You will note, also, the table you have that was issued way back in 1980 by OPM. You will find in headquarters—postal headquarters, which is not a collective bargaining group—quite a difference in the salaries of the average female compared to the other employees. It goes down to about a 25-percent differential.

Ms. **Oakar**. We've heard it argued that pay equity remedies interfere with the free market. And to correct the problem will create economic chaos, because the cost is so high.

Since the Postal Service has already created a fairly equitable pay system, has it caused economic hardship to the system?

Mr. **Biller**. I'm glad you asked that question, because it's interesting. Under the old system, the Postal Service could never be in the black. Now, according to the Postmaster General's report, the

Postal Service is $616 million in the black this past year. Three out of the last 5 years have been in the black, and at the very time when they have achieved pay equity. Because they've got to understand that when people are paid appropriately, there are returns.

As you well know, we also have the highest productivity, not only in this Postal Service, but all other postal services in the world. As a matter of fact, our productivity has probably been higher than that in the private sector, which has been looking so admiredly at the Japanese. Japanese postal workers are the second. And they're probably 30 percent or 25 percent behind us in productivity.

So that absolutely, certainly in this industry, probably the largest in the Nation, other than Defense, the reverse is shown by the figures. And these are not my figures. They are the figures of the Postmaster General of the United States.

Ms. Oakar. Well, the Chair would like to thank you both for being here. Thank you very much for your leadership. I think your point about productivity—when people are paid fairly, they're bound to be more productive and their morale is higher—certainly relates to the economy in general.

Mr. Biller. I would just add one point, Madam Chair, that the last time OPM issued these statistics was November 1980. And again I say, it obviously reflects a great degree of insensitivity by this administration, which has been forced to protest kind of too much.

We thank you very much, not only for permitting us to be here, but for your continuing efforts, and your colleagues' efforts as well. But, we know that your job is tough. Thank you very much.

[Mr. Moe Biller submitted the following answers to written questions:]

Q: Mr. Biller, in your testimony you come down quite hard on the Reagan Administration as being anti-feminist and anti-worker. Do you feel this administration will ever attempt to view things from the perspective of federal civilian working women?

A: Madam Chair, if Mr. Reagan's past record over the last 3 years is any indication, the answer, I'm afraid, is clearly--NO. Women in the federal government have born the brunt of every administration effort to slash away at pay, benefits and jobs. Being lower paid, women suffer most when pay raises are insufficient. Being the vast majority of single heads of households, women suffer most when health benefits are arbitrarily cut. And being last hired, lacking seniority and veterans's preference, women are first fired. This definitely has been the sorry pattern in all the RIF's.

Q: Mr. Biller, in your prepared remarks you comment on a study researched and written by Joel Popkin and Martin Asher. In their study, as you pointed out, they come to startling conclusions regarding postal workers. Would you like to comment further on their study?

A: The study by Joel Popkin and Martin Asher compared postal Service wages with wages in 12 major industries. As we pointed out in our statement, the fact which distinguishes the Postal Service from all other industries studied is the absence of any significant wage gap between men and women and between blacks and whites. Furthermore, other data indicate that although women are still under-represented in the Postal Service compared to their general workforce participation, they are well integrated throughout the major crafts.

It is commendable, indeed, that the Postal Service neither segregated its workforce by initial job "streamlining", nor does it blindly follow market rate discrimination against women and minorities in pay. This is a real tribute to the effectiveness of sound labor-management negotiations.

Q: In your testimony you speak in glowing terms about the success of women in attaining better paying positions in the U.S. postal service. Why is it, in your opinion, women fair better in the postal service than in the federal civilian workforce?

A: In the Postal Service, women and men have the distinct advantage of strength through collective bargaining. As you know, men and women lack this advantage in the federal civilian workforce. Also, affirmative action and upward mobility have been prominant issues in our negotiations.

Q: Mr. Biller, in your testimony you describe in detail the Equal Employment Opportunity Commission's failure to monitor and enforce sex based wage discrimination. Why in your opinion has the EEOC shown such reluctance to enforce the law against this type of discrimination?

A: Madam Chair, the EEOC's reluctance to enforce the law against sex-based wage discrimination can only mean one thing-this administration doesn't take such practices very seriously. Here we sit, a full 3 years after the landmark *Gunther* decision, and the EEOC Chair says they don't yet have a "policy" on how to process sex-based wage discrimination charges. They have a cose backlog of 266 charges of this kind, and lacking any final policy guidelines, field officers don't have the foggiest notion how to process new charges. Is this lack of "policy" or lack of "commitment"? I suggest, Madam Chair, it is the latter.

Ms. **Oakar**. Thank you very much. Thank you both. We're going to recess for about 10 minutes because of a vote. When we come back, we're going to hear from various organizations, including the Nurses' Association and Federally Employed Women, Nine to Five, the National Association of Government Employees, and we're going to hear from Mrs. Schlafly of the Eagle Forum, and others. We'll be right back.

[Recess.]

Ms. **Oakar**. We are going to ask our next witnesses to come up as a panel in the interests of your time, if you don't mind. Unfortunately, various budgets are being dealt with today on the House floor. Dr. Lea Acord, who is the executive administrator of the Illinois Nurses' Association, speaking on behalf of the American Nurses' Association; Ms. Delores Burton, who is president of the Federally Employed Women, and Ms. Cheryl Wainwright, who is with Nine to Five. We are pleased to have you here.

I would like to also ask Ms. Catherine Waelder, who is counsel for the National Federation of Federal Employees; and Ms. Cynthia Denton, who is the general counsel for the National Association of Government Employees, to please come up as well. Thank you very much.

Dr. Acord, if you want to begin, the Chair is happy to have your statement that you submitted. You may discuss it in any way that is most comfortable. If you feel that you would like to summarize your statement, it would be helpful because I would like to ask you questions.

Thank you very much for being here, Dr. Acord.

STATEMENT OF LEA ACORD, EXECUTIVE ADMINISTRATOR OF ILLINOIS NURSES' ASSOCIATION ON BEHALF OF AMERICAN NURSES' ASSOCIATION

Ms. **Acord**. My name is Lea Acord, and I am a registered nurse and executive administrator of the Illinois Nurses' Association. I am appearing on behalf of the 170,000 members of the American Nurses' Association.

The American Nurses' Association is pleased to have the opportunity to present our views on pay equity. And we commend the subcommittee for bringing to the public an issue which is crucial to the attempts of millions of working women to achieve pay equity.

ANA is painfully aware that the higher the concentration of women in an occupation, the lower the wage is in relation to the occupation's worth. The 1.7 million registered nurses, over 97 percent of whom are women, have always suffered from this discrimination.

The American Nurses' Association is committed to achieving pay equity for all working women. I would like to discuss two of ANA's efforts to combat sex-based wage discrimination.

The first, a wage discrimination charged filed with EEOC in 1977 against the University of Pittsburgh argues forceably for better enforcement of the law, while the second highlights ANA's most recent effort to achieve pay equity for nurses and other female employees of the State of Illinois.

Before joining the Illinois Nurses' Association, I was on the faculty of the University of Pittsburgh's School of Nursing. In August 1977, ANA on behalf of the nursing faculty of the University of Pittsburgh filed a sex discrimination charge with EEOC alleging that the university discriminated against all women faculty members by paying them lower salaries than those paid male faculty, in violation of title VII of the Civil Rights Act.

In August 1978, which was 1 year later, the EEOC issued a subpena to the university demanding salary and job information regarding faculty members employed in four health professional schools of the university.

The EEOC claimed, and we agreed, that such information was necessary to demonstrate employment practices and patterns of the university. It was necessary to get this kind of information from other health related professional schools, because the school of nursing was 97 percent female. So we had to get information from other comparable schools.

The university refused to submit the information claiming that salaries could not be compared. And it was argued that each school had striking differences in factors influencing salaries which were most influenced by the marketplace.

In 1979, the EEOC applied for an order enforcing the subpena. And in March 1980, the district court issued such an order rejecting the university's claim that information concerning the faculty of the four schools was not relevant.

The court of appeals affirmed the district court's decision finding that the information requested was relevant. And the issue was resolved by the Supreme Court in October 1981 when it denied review of the lower court's decision.

Since 1981, EEOC has failed to pursue the case. In spite of continual correspondence with the EEOC and assurances that the matter will be investigated, EEOC has not taken any action since the court's decision in 1981.

Ms. **Oakar**. I just want you to repeat that.

Ms. **Acord**. Since October 1981 when the Supreme Court failed to review the lower court's decision, in other words upheld the lower court's decision, and the university was told to give the information to EEOC, EEOC has not done anything.

Ms. **Oakar**. So the courts are on your side on this?

Ms. **Acord**. Yes; they were on our side in this case.

Ms. **Oakar**. And they have not taken any action?

Ms. **Acord**. No, they have not. Which means that it has been 7 years since we initially filed the case in 1977, and 3 years since the university was told to give the information over. And still the EEOC has not done anything about it.

It is curious to me that before 1981, EEOC seemed to be working diligently to get the information from the university. Once the court said that the university should give the information over, then they stopped. And they decided that they were not going to go forward with the case. I am not really sure why, but this was in 1981.

Ms. **Oakar**. I think that is important for the record to state, because we had the EEOC chairman here earlier.

Ms. **Acord**. Yes; I was here when he was and heard.

Ms. **Oakar**. You would not agree with his attitude about the agency's zeal, would you?

Ms. **Acord**. No; I would not.

Ms. **Oakar**. OK, thank you.

Ms. **Acord**. Most recently in a second case, ANA in conjunction with the Illinois Nurses' Association filed a charge of discrimination with the EEOC on behalf of nurses and other women employees of the State of Illinois.

The complaint was filed December 22, 1983, and it charges that the State engaged in illegal sex discrimination against employees in female dominated job classifications on the basis of wages and other terms and conditions of employment in violation of title VII as well as the Illinois Human Rights Act.

The complaint is based on a job classification study conducted by Illinois and released in June 1983, less than 1 year ago. The study focused on 24 job classifications; 12 were female dominated, and 12 were male dominated. And each job classification was given a certain number of points based on the evaluation. The more complex the job, the higher number of points assigned to it.

Here are some examples of the findings of the study. First of all, No. 1, the predominantly female classification of nurse 3 was assigned 415 points for job complexity. The predominantly male dominated classification of stationary engineer was assigned 181 points.

Nevertheless, stationary engineers earned $12,500 more last year than did R.N.'s classified as nurse 3.

The second example. There are approximately 58,000 employees in State service in Illinois—57 percent are women. However, women are less than 20 percent of those State employees who earn more than $26,000 a year, but comprise more than 85 percent of those employees who earn less than $16,000 a year.

The third example. Of 12,000 occupational classes currently in use in Illinois, in the State, 51 percent are male dominated, and 18 percent are female dominated. Which means that 70 percent of all classifications are dominated by one sex or the other.

The facts of the case are very similar to *AFSCME* v. *State of Washington*. Like the *Washington* case, Illinois has conducted its own studies which show that female employees are underpaid relative to males holding comparable jobs. And Illinois has failed to take steps to remedy the situation.

As you know, in the *Washington* case, the judge ruled that Washington violated title VII by paying women in predominantly female job classifications less than men in male dominated categories.

Now because of ANA's experience with EEOC, and as I told you, ANA filed a sex discrimination charge at the University of Pittsburgh, ANA requested a right to sue, and received a right to sue letter from the Department of Justice last month. And ANA will file suit this spring.

It is our belief that the outcome of this case will be very similar to the *Washington State* case.

I would like to thank you. And if there are any questions, I would be happy to answer them.

Ms. **Oakar**. Thank you very much. And we will submit your entire statement for the record.

[The statement of Ms. Acord follows:]

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PREPARED STATEMENT OF LEA ACORD, PH.D, R.N.

The American Nurses' Association is the national professional association representing the nation's registered nurses. We are pleased to have the opportunity to present our views on H.R. 5092, The Pay Equity Act of 1984, and H.R. 4599, The Federal Employees Pay Equity Act of 1984. In addition, we would like to discuss our recent efforts to achieve pay equity.

INTRODUCTION

The American Nurses' Association is painfully aware that, the higher the concentration of women in an occupation, the lower the wages in relation to the occupation's worth. Registered nurses, over 97 percent of whom are women, have always suffered from this discrimination. Registered nurses exemplify the problems women face in receiving equitable compensation for their work. In fact, to a large extent, registered nurses have become a symbol of the persistent inequities experienced by women who work.

There are over 1.3 million practicing registered nurses for whom the concept of pay equity is a top priority. The American Nurses' Association is committed to achieving pay equity for all working women, and believes that the time for action is now. The working women of this country can no longer afford to wait to earn an equitable wage while policy makers continue merely to give lip service to the problem. Working women need concrete steps taken now to eliminate the enormous wage gap that exists between men and women.

Title VII of the Civil Rights Act of 1964, Executive Order 11246, and Title V of the U.S. Code all address pay inequities. A major obstacle to eliminating discrimination and achieving pay equity at the national level is the lack of adequate enforcement of these statutes that prohibit wage discrimination on the basis of sex, race, national origin, handicap, or religion. It must be acknowledged that this enforcement problem is compounded by the restrictive interpretation of some of these laws by the federal courts. Measures must be taken to ensure that those agencies responsible for upholding the laws do so. There is substantial evidence that the U.S. Department of Justice, Office of Federal Contract Compliance Programs, Equal Employment Opportunity Commission, and the Office of Personnel Management have failed to fulfill their responsibilities.

H.R. 4599 AND H.R. 5092

Both H.R. 4599, The Federal Employees Pay Equity Act of 1984 and H.R. 5092, The Pay Equity Act of 1984, address the problem of inadequate enforcement of existing statutes pertaining to wage discrimination. Both bills contend that current laws adequately address pay equity and that additional statutory language prohibiting wage discrimination at the federal level is unnecessary.

H.R. 4599, The Federal Employees Pay Equity Act of 1984. H.R. 4599 is intended to promote pay equity and eliminate certain discriminatory wage setting practices within the Federal civil service. The bill recognizes that these discriminatory practices continue to occur despite the fact that federal equal opportunity laws exist which prohibit such practices.

The bill would require the Office of Personnel Management to identify and eliminate discriminatory wage setting practices within the federal government by studying the government's job-classification system and submitting a report to the President and Congress which, 1) contains findings with respect to discriminatory wage setting practices, 2) identifies appropriate measures for eliminating such practices, including proposals relating to the development of equitable job evaluation techniques, and 3) specifies measures and makes recommendations for legislative or other action necessary to meet the purposes of the bill.

H.R. 5092, The Pay Equity Act of 1984. H.R. 5092, The Pay Equity Act of 1984 is intended to require that additional efforts be made to eliminate discriminatory practices with respect to wages and other forms of compensation.

The bill would require the Equal Employment Opportunity Commission (EEOC), the Department of Labor, and the Justice Department to report to the President and Congress on their activities in the pay equity area. EEOC would be required to carry out a continuous program of education on ways to eliminate discriminatory wage setting practices through research on equitable pay practices. The EEOC would also develop a plan to provide technical assistance to any employer seeking help in pay setting practices.

In its report to the President and Congress, the EEOC would describe its activities on pending pay equity charges, providing information on the number of cases filed, the locations of the charges filed in regional offices, the type of allegations filed, number of cases processed, the decisions made with respect to the charges, and the number of civil actions which the Commission has filed concerning wage discrimination.

In addition, the EEOC would conduct a study of the Federal government's pay structure, and report recommendations for change to both the Congress and the Office of Personnel Management. Similar reports would be filed by the Department of Labor, regarding the enforcement of Executive Order 11246 which prohibits wage discrimination by Federal contractors, and by the Justice Department, regarding its efforts in enforcing present pay equity laws.

ANA RECOMMENDATIONS

While both bills have identified the problem at the national level as one of inadequate enforcement of existing laws, we have concerns about whether, under current circumstances, these bills are sufficient to ensure that enforcement. The Office of Personnel Management and EEOC have been unwilling to enforce laws prohibiting wage discrimination. We are skeptical that reports or investigations conducted by any of the federal agencies under this administration would reflect a more enlightened viewpoint or bring about greater commitment to eliminating wage discrimination than those agencies have thus far demonstrated.

Regarding H.R. 4599, specifically, we believe that it is unlikely that the Office of Personnel Management is capable of conducting an unbiased study of the federal civil service job classification. We do not believe that an employer can objectively assess itself as to discriminatory or otherwise unfair employment practices. We strongly recommend that any study conducted of the federal government be undertaken by an independent consultant with an opportunity for the input and oversight by employee representatives.

In addition, with respect to H.R. 4599, we are concerned that the present language of the bill is too restrictive -- perhaps even more restrictive that the Equal Pay Act. Sec. 3(2) presently defines discriminatory wage setting practices as covering only those jobs requiring comparable education, training, skills, experience, effort, responsibility and working conditions. The requirement of job comparability does not address the problem for women working in predominantly female occupations. Since the vast majority of working women are employed in sexually segregated jobs, there is no "comparable comparisons." For example, college prepared registered nurses working in hospitals could not be compared with truck drivers working on highways since none of the factors identified in the bill are likely to be comparable in these two jobs. Moreover, this language also encourages a narrow factor by factor comparison of their worth as a whole, rather than examining a composite of these factors.

We strongly recommend the following language:

SEC. 3.

(2) "discriminatory wage-setting practices" means the setting of wage rates paid for jobs held predominantly by female workers

> lower than those paid for jobs held predominantly by male workers, although the work performed by the female workers is of at least comparable value in the overall composite of skill, effort, responsibility and working conditions required.

In addition, the definition of equitable job-evaluation technique should specifically exclude market wage rates as a component. Although market wage rates are commonly incorporated into job evaluation plans, they have been shown to reflect sex bias. When an employer says that he is paying his female employees according to the "going wage rate" in the female labor market, he is actually engaging in sex-based discrimination. For this market, itself, is depressed by discriminatory, societal notions that a woman's work is of less value to working America than is her male counterpart's.

We also question whether the bill intentionally omits, as prohibited components for determining the comparable value of a job, those reflecting religion, age and handicap. We recommend the following language:

> SEC. 3.
>
> (5) "equitable job-evaluation technique" means a job-evaluation technique which, to the maximum extent feasible, does not include components for determining the comparable value of a job that reflect the sex ... of the employee, or the market wage rate for such job.

With respect to H.R. 5092, we recommend specific reference to the marketplace as a source of discrimination, for those who would argue that the marketplace is neutral rather than inherently sex-biased and is therefore a proper basis for wage-setting. For example:

> SECTION 1 (b) (2). Promoting the establishment of wage rates or other pay scales and job classifications which are based

> upon the worth of the work performed rather than the sex ... of the employee, or of market wage rates.

ANA EFFORTS TO COMBAT SEX-BASED WAGE DISCRIMINATION

ANA is well acquainted with the frustration associated with government agency failure to pursue charges of discrimination. In August 1977, the American Nurses' Association, on behalf of members of the faculty at the School of Nursing at the University of Pittsburgh, filed a sex discrimination charge alleging that the University discriminated against women faculty members at the School of Nursing by paying them lower salaries than those paid male faculty in other schools. All but one of the nursing school faculty were female. The charge was filed on behalf of 29 full time faculty members of the University's School of Nursing. ANA alleged that the discrimination was in violation of Title VII of the Civil Rights Act.

On August 1, 1978, the EEOC issued a subpoena to the University demanding the sex, date of hire, date of termination, academic degree, tenure/non-tenure status, positions held, initial and present salaries, functional job description, and job qualifications of every full time and part time Assistant Instructor, Instructor, Assistant Professor, Associate Professor and Professor employed in four separate and distinct professional schools of the University: Nursing, Social Work, Health Related Professions and Pharmacy. The EEOC claimed that salaries and job information of faculty members other than in the School of Nursing would demonstrate the employment practices and patterns of the University, and would support the charge of discrimination if women instructors and professors performing similar duties are paid lower salaries than male instructors and professors.

The University refused to submit the information required by EEOC, claiming that the information was highly sensitive and confidential, and the salaries could not be compared because of the vast differences between faculty members teaching different disciplines in different schools. The Deans of the four schools testified that the comparisons sought to be made by the EEOC could not be made and would not be relevant to Nursing School salaries. It was argued that each School had striking differences in the factors influencing faculty salaries, duties, and responsibilities, and, most importantly, salaries of faculty members were influenced by the marketplace - e.g., the School of Pharmacy had to offer a salary high enough to attract professionals to the school as an alternative to working as a private practicing pharmacist.

In November 1979, the EEOC applied to the District Court for an order enforcing the subpoena. In March 1980, the District Court issued an order enforcing the subpoena. The court rejected the University's claim that information concerning the faculty of the four professional schools was not relevant to the EEOC investigation of the sex discrimination charge filed on behalf of the female members of the nursing faculty, noting that the very language of the charge showed that the charge is not restricted to the School of Nursing, but its dimensions are University-wide. Further, the court found that, "the entire faculty of the School of Nursing is female and information beyond (that school) may be crucial to the EEOC's determination of probable cause." The Court of Appeals affirmed the District Court's decision finding that the information required by the subpoena was relevant to the charge under investigation. The issue was resolved by the Supreme Court in October 1981, when it denied review of the University of Pittsburgh's petition to overturn the lower court's decision.

After this decision, the EEOC assigned an investigator to this matter. Thus far, however, EEOC has failed to pursue the case. In spite of continual correspondence with the EEOC and assurances that the matter will be investigated, EEOC has not taken any action since the Court's decision in 1981 to resolve this matter.

We believe that this instance is a good example of the treatment of wage discrimination cases by EEOC, and argues forcefully for better enforcement of the law, not only by the EEOC, but by all federal agencies in order to ultimately achieve pay equity.

PAY EQUITY IN ILLINOIS

Most recently, ANA, in conjunction with the Illinois Nurses' Association, filed a charge of discrimination with the EEOC on behalf of nurses and other women employees of the State of Illinois.

The complaint, filed December 22, 1983, at the EEOC district office in Chicago, charges that the State is engaged in illegal sex discrimination against employees in female dominated job classifications on the basis of wages and other terms and conditions of employment. Such discrimination is in violation of Title VII of the Civil Rights Act of 1964, as well as the Illinois Human Rights Act. The State under-compensates the female-dominated classifications relative to male dominated classifications involving equivalent or lesser skill, effort, and responsibility.

The State of Illinois released a study in June 1983, which demonstrates that it is very expensive to be a woman worker in Illinois State service, and that women are paid substantially less than men for jobs of equivalent or lesser complexity in duties and requirements. There are approximately 58,000 employees in State service, of whom 56% are women. However, as shown by the following chart, women are less than 20% of those state employees who earn more than $26,000 a year, but more than 85% of those employees who earn less than $16,000 a year.

TABLE 1

Distribution of Male and Female Employees in Each Pay Grade

	MALE		FEMALE	
	Number	% of Salary Group	Number	% of Salary Group
$26,000 and above	4,460	81.08	1,041	18.92
$22,001 - $26,000	9,246	64.63	5,061	35.37
$16,001 - $22,000	8,982	52.23	8,216	47.77
$16,000 and below	2,780		16,673	85.71
	25,468		30,991	

The State is responsible for this massive and illegal underpayment of women by virtue of its maintenance of a discriminatory job classification system, occupational segregation in the workforce, and discriminatory compensation of those job classifications which are predominantly female. Of 1,218 occupational classes currently in use in the State workforce, 655 (51.13%) are male-dominated and 234 (18.27%) are female-dominated. Nearly 70% of all job classifications are dominated by one sex or the other, with females occupying a smaller number of job classifications.

The June 1983 study focused on 24 heavily-populated State job classifications (almost 16,000 State employees work in one of these classifications, or almost 28% of the total State workforce), which are notably sex-segregated -- i.e. 80% of one sex or the other. Twelve of the classifications chosen were predominantly female, while 12 were predominantly male, as follows:

TABLE 2

Male-Dominated Classes

Title	% Males	Total Number of Employees
1. Correctional Officer	85.8	2,833
2. Highway Maintainer	99.1	1,666
3. Highway Maint. Equip. Oper.	99.3	614
4. Stationary Engineer	100.0	259
5. Automotive Mechanic	100.0	168
6. Security Officer I	83.7	141
7. Electrician	100.0	92
8. Veterans Empl. Repr. I	97.5	80
9. Accountant V	88.3	77
10. E.S. Local Office Manager I	84.6	65
11. Storekeeper II	95.2	61
12. Financial Inst. Examiner III	96.5	57

Female-Dominated Classes

Title	% Females	Total Number of Employees
1. Mental Health Technician II	82.8	2,785
2. Clerk Typist III	98.5	1,524
3. Public Aid Caseworker IV	80.0	1,519
4. Clerk Typist II	98.5	1,070
5. Licensed Practical Nurse II	97.1	624
6. Nurse III	95.6	608
7. Data Input Operator II	96.8	554
8. Secretary I	99.3	538
9. Secretary II	100.0	282
10. Switchboard Operator II	95.2	166
11. Accountant I	80.8	104
12. Nurse IV	97.3	73

The jobs were then rated using a widely-known method of job-evaluation developed by Hay Associates, a nationally-prominent management consulting firm, which considers job complexity in terms of such factors as know-how, problem solving, accountability, and working conditions.

Hay estimates that the percentage of underpayment to female jobs range from 29% at 100 job evaluation points to 56% at [illegible]00 job evaluation points. As Table 3 graphically demonstrates, this costs female workers dearly.

TABLE 3

Selected Female Job Classifications	Hay Points	June 1983 Average Monthly Salary	Percentage Underpayment	Annual Underpayment
Nurse IV	480	$2,104	56%	$14,139
Nurse III	415	1,794	56%	12,056
Data Input Oper. II	132	1,012	29%	3,522
Clerk-Typist II	120	983	29%	3,421

As shown in Table 4, women employees are even more disadvantaged in pay in the more complex jobs, because the salary disparities are greater.

TABLE 4

Hay Job Evaluation Points	Male Advantage in Annual Salary
100 J.E. Points	$6,288
500 J.E. Points	7,152

In many instances, as shown by Table 5, male-dominated jobs with fewer points than female jobs in overall complexity earn more than those female jobs.

TABLE 5

Selected Job Classifications	Hay Points	June 1983 Average Monthly Salary	Annual Male Salary Advantage
Nurse IV (F)	480	$2,104	
Accountant V (M)	451	2,470	$ 4,392
Nurse III (F)	415	1,794	
Stationary Engineer (M)	181	2,389	12,540
Secretary I (F)	203	1,293	
Storekeeper II (M)	157	1,432	1,668

Eleven registered nurses employed by the State of Illinois, including one male, are joining the American Nurses' Association and the Illinois Nurses' Association as charging parties against the state's sex-discriminatory practices. They are members of the Illinois Nurses' Association and American Nurses' Association.

The facts of this case are similar to those in AFSCME v. State of Washington, U.S. District Court, Western District of Washington, No. C82-465T, where the court considered a claim of intentional discrimination against female employees. Like the State of Washington, Illinois has conducted its own job evaluation study which showed the female employees, are underpaid relative to males holding comparable jobs. Also like Washington, Illinois has failed to take steps to remedy this discrimination.

In the Washington State case, the judge ruled that Washington violated Title VII of the Civil Rights Act by paying women in predominantly female job classifications less than men in male dominated categories.

The decision was based on the job evaluation study which showed that women in predominantly female jobs were paid 20 to 30 percent less than men in jobs rated as equal in value.

In March 1984, ANA received a right to sue letter from the Department of Justice and intends to pursue the Illinois discrimination case further, and will likely file suit this spring.

CONCLUSION

It is well established that working women continue to earn far less than working men, and that this wage gap is one of the oldest and most enduring symptoms of discrimination. It is also well known that the single, most important reason for this wage discrepancy is persistent and severe occupational segregation which locks women into jobs whose worth is undervalued. This wage gap has proven to be relatively immune from significant economic and political changes.

A major obstacle to eliminating discrimination and achieving pay equity is the lack of enforcement of existing federal statutes that prohibit wage discrimination of the basis of sex, race, national origin, handicap and religion. Although this enforcement is compounded by restrictive interpretation of some of these laws by federal courts, it is essential that those agencies responsible for upholding these laws vigorously investigate charges of discrimination and expeditiously pursue remedies to correct violations of the law.

Any law intended to promote pay equity and eliminate discrimination wage setting practices must address the specific problems of women in female-oriented occupations. Thus, wage setting practices must examine a composite of factors, rather than a narrow factor comparison in determining job worth.

Any law prescribing job evaluation techniques should specifically exclude market wage rates as a component because these rates are inherently sex-biased.

The American Nurses' Association would like to thank this committee for bringing attention to the problem of discriminatory wage setting practices and specifically to the inadequate enforcement of federal nondiscrimination laws. We look forward to working with you to help resolve these problems and to achieve pay equity for all women.

Ms. OAKAR. Our next witness is Delores Burton, who is the president of Federally Employed Women. Delores, thank you very much for coming.

STATEMENT OF DELORES BURTON, PRESIDENT, FEDERALLY EMPLOYED WOMEN, INC.

Ms. BURTON. Thank you very much, Chairwoman Oakar. I am De Burton, president of Federally Employed Women.

The issue of pay equity is an important and timely issue. Pay equity has always been of major concern to our members. And we applaud you, Madame Chair, for your initiative in introducing H.R. 4599 and H.R. 5092, and chairing hearings on this legislation. And we are grateful for the opportunity to appear before you today.

I will proceed to summarize my testimony, and would like to submit my written testimony for the record.

Ms. OAKAR. Thank you.

Ms. BURTON. The fact that women are paid less than men in our society has a long history. Women have always earned less wages than men. A slogan of the women's movement is that women make 59 cents for every dollar earned by men.

Although there have been minor fluctuations in this statistic, it has held basically true since the turn of the century. This persistent wage gap has resulted in women having fewer earnings to support themselves and their families.

The wage gap reflects the deep rooted sexual discrimination that is so prevalent in this world. Occupational discrimination is prevalent in the federal work force. Today in the Federal Government, women are concentrated in the lowest general schedule grades earning the lowest wages; 75 percent of all of the women in the GS pay system are in grades 1 through 8, and 85 percent of all women in the GS pay system are in grades 1 through 9. Only 6 percent of all workers in the executive pay system are women.

The existence of occupational segregation in the Federal Government is observed even more clearly when we study the detailed occupational listings. For example, even though women are 80 percent of all clerical workers, they are 99 percent of the secretarial series which is a GS-5.

Women are 10 percent of all the professional employees, but 99 percent of all public health nurses are in the professional occupational category.

The fact that women are in the lowest grades directly results in federally employed women earning less wages than men employed by the Federal Government. The median earnings in 1981 of federally employed men was $22,676 a year as compared to $14,414 a year for women.

The occupational crowding of women in certain job categories coupled with wage data makes a strong case for discrimination practice within the Federal Government. These practices must be halted at once.

The Civil Service Reform Act of 1978 endorses the concept of comparable worth and suggested demonstration projects to be implemented. The time for action is now. Comparable worth for federally employed women means that Federal employees regardless of sex should be paid equally for jobs that are of comparable value to the Government as the employer in terms of skill, effort, and responsibility.

Inherent in this definition is the assumption that the employer has a unified job evaluation system which can assign relative value to all jobs creating a scheme of internal equity.

Caution must be executed, however, because the nature of job evaluation makes it possible for sexual bias to enter. For example, when determining which factors to include in a job evaluation and to what degree they should be weighed, the skills involved in a woman's job are often assigned less importance.

The passage of H.R. 4599, the Federal Employees Pay Act of 1984, and H.R. 5092, the Pay Equity Act of 1984 would accomplish many goals.

The Office of Personnel Management's study of wage practices and position classification in the Federal government would clearly show that a wage gap does exist. Agency participation would both heighten awareness and include the agencies in their accountability. Setting goals for EEOC will encourage stricter enforcement of title VII.

We applaud your efforts, Madame Chair, to correct pay inequities in the Government. We support both H.R. 4599 and H.R. 5092, and we look forward to working with you on the passage of this legislation.

There are many compelling reasons why pay equity should be realized in our society. Women have the same expenses as men, and should not be penalized because of their sex. The wage gap has contributed to a growing number of women and children with incomes below the poverty level.

Women-headed households as well as elderly women are increasingly living in poverty. Retirement annuities are dependent on one's lifetime earnings.

Low wages directly translate into small pensions. This is a problem shared by women in both private and public employment. The mean amount of a woman's Federal pension in 1982 was $7,541 per year as compared to $13,767 for men.

FEW urges this committee to vigorously pursue the issue of pay equity in the Federal sector as well as the private sector. The Government should act as a role model employer for the private sector to follow. Eliminating wage disparities between men and women in comparable jobs in the Federal Government and establishing bias free job evaluations would encourage the private sector to follow suit.

We hope the day is near when jobs are not defined by sex, but by the skills and responsibilities needed to perform these jobs.

We thank you very much for allowing us to testify here today, and we look forward to working with you again.

[The statement of Ms. Burton follows:]

TESTIMONY ON PAY EQUITY BEFORE THE POST OFFICE AND CIVIL SERVICE SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS, APRIL 4, 1984.

CHAIRWOMAN OAKAR, THANK YOU FOR ASKING FEDERALLY EMPLOYED WOMEN, INC. (FEW) TO TESTIFY HERE TODAY. FEW IS AN INTERNATIONAL MEMBERSHIP ORGANIZATION REPRESENTING WOMEN IN THE FEDERAL GOVERNMENT THROUGHOUT THE UNITED STATES AND FOREIGN NATIONS. FEW WAS FOUNDED IN 1968 TO ADVOCATE EQUAL OPPORTUNITY AND FOSTER FULL POTENTIAL FOR WORKING WOMEN IN THE FEDERAL SECTOR. IT IS A PRIVATE, NON-PROFIT, NON-PARTISAN ORGANIZATION AND ITS CHARTER IS THE SAME AS THAT OF THE FEDERAL WOMEN'S PROGRAM, AN INTERNAL GOVERNMENT PROGRAM ESTABLISHED BY EXECUTIVE ORDER 11375.

THE ISSUE OF PAY EQUITY IS AN IMPORTANT AND TIMELY ISSUE. PAY EQUITY HAS ALWAYS BEEN A MAJOR CONCERN TO OUR MEMBERS AND WE APPLAUD YOU, MADAM CHAIR, FOR YOUR INITIATIVE IN INTRODUCING H.R. 4599 AND H.R. 5092 AND CHAIRING HEARINGS ON THIS LEGISLATION. WE ARE GRATEFUL FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

THE FACT THAT WOMEN ARE PAID LESS THAN MEN IN OUR SOCIETY HAS A LONG HISTORY. WOMEN HAVE ALWAYS EARNED LESS WAGES THAN MEN. A SLOGAN OF THE WOMAN'S MOVEMENT IS THAT WOMEN MAKE 59 CENTS FOR EVERY DOLLAR EARNED BY A MAN. ALTHOUGH THERE HAVE BEEN MINOR FLUCTUATIONS IN THIS STATISTIC, IT HAS HELD BASICALLY TRUE SINCE THE TURN OF THE CENTURY. THIS PERSISTENT WAGE GAP HAS RESULTED IN WOMEN HAVING FEWER EARNINGS TO SUPPORT THEMSELVES AND THEIR FAMILIES. THE WAGE GAP REFLECTS THE DEEP ROOTED SEXUAL DISCRIMINATION THAT IS SO PREVALENT IN THIS WORLD.

THE MALE-FEMALE WAGE DIFFERENTIAL IS WELL DOCUMENTED IN THE PRIVATE SECTOR, IN STATE AND LOCAL GOVERNMENTS, AND IN THE FEDERAL WORKPLACE. NUMEROUS STUDIES HAVE BEEN CONDUCTED THAT DEMONSTRATE WHEN AGE, LABOR FORCE EXPERIENCE, GEOGRAPHIC LOCALITY, AND EDUCATIONAL ATTAINMENT IS HELD CONSTANT FOR MEN AND WOMEN, A 20 PERCENT WAGE DIFFERENTIAL STILL EXISTS. THIS 20 PERCENT EARNINGS GAP IS USUALLY ATTRIBUTED TO SEX DISCRIMINATION IN THE LABOR MARKET.

THE WAGE GAP BETWEEN MEN AND WOMEN IS NOT GOING TO GO AWAY BY ITSELF. LEGISLATION AS WELL AS LITIGATION IS NECESSARY TO CORRECT THIS INEQUITABLE SITUATION. THE PROPONENTS OF A FREE MARKET SYSTEM INSIST THAT SUPPLY AND

DEMAND DETERMINE MARKET WAGES, AND THEREFORE, WOMEN ARE RECEIVING WAGES IN ACCORDANCE WITH THEIR WORTH TO SOCIETY. SUPPLY AND DEMAND FUNCTIONS IN THE LABOR MARKET CONTAIN DISCRIMINATORY ATTITUDES THAT CAN ONLY BE CORRECTED BY MEASURES SUCH AS THE PROPOSED LEGISLATION.

OCCUPATIONAL SEGREGATION EXISTS WHEN WOMEN AND MEN ARE CONCENTRATED IN DIFFERENT JOB CATEGORIES. OCCUPATIONAL SEGREGATION SIGNIFICANTLY IMPACTS MALE AND FEMALE WAGE RATES. WOMEN ARE EXCLUDED FROM HIGH WAGE JOBS WHERE THE MAJORITY OF THE WORKERS ARE MALE AND CROWDED INTO JOBS WITH LOWER RATES OF PAY AND PRESTIGE. IN ADDITION, WOMEN AND MEN ARE OFTEN IN JOBS WITH COMPARABLE DUTIES AND RESPONSIBILITIES, YET THE JOBS DOMINATED BY MALE EMPLOYEES ARE HIGHER WAGE OCCUPATIONS. FOR EXAMPLE, WOMEN ARE TYPICALLY CHAMBERMAIDS WHICH IS SIMILAR TO THE MALE DOMINATED OCCUPATION OF JANITORS, YET THE 1970 MEDIAN EARNINGS FOR CHAMBERMAIDS WAS $2870 PER YEAR AS COMPARED TO THE 1970 MEDIAN EARNINGS OF $3590 PER YEAR FOR JANITORS. ACCORDING TO MANY ECONOMISTS, THE LOW WAGES THAT ARE ASSOCIATED WITH SEGREGATED JOBS IS THE MAJOR EXPLANATION FOR THE EARNINGS GAP BETWEEN MEN AND WOMEN. CERTAIN JOB CATEGORIES ARE RESERVED FOR WOMEN AND MINORITIES WHICH SIMULTANEOUSLY DETERMINES THE LOW ECONOMIC VALUE OF THOSE JOBS. IN FACT, STUDIES HAVE SHOWN THAT AS WOMEN ENTER AN OCCUPATION IN LARGE NUMBERS, THE WAGES FOR BOTH MEN AND WOMEN IN THAT OCCUPATION DECLINE. A NATIONAL ACADEMY OF SCIENCE STUDY FOUND THAT EACH ADDITIONAL PERCENTAGE POINT OF WOMEN IN AN OCCUPATION EQUALS $42 LESS IN OVERALL WAGES. THE OCCUPATION OF RADIO OPERATORS ILLUSTRATES THIS PHENOMENON. IN 1960 ONLY 17 PERCENT OF ALL RADIO OPERATORS WERE WOMEN, BUT IN 1980 57 PERCENT OF ALL RADIO OPERATORS WERE WOMEN. DURING THIS 20-YEAR PERIOD, MEN'S MEDIAN ANNUAL WAGES IN THE RADIO OPERATION OCCUPATION DROPPED FROM 108 PERCENT OF AVERAGE MEN'S WAGES IN ALL OCCUPATIONS TO ONLY 67 PERCENT OF AVERAGE MEN'S WAGES IN ALL OCCUPATIONS.

OCCUPATIONAL SEGREGATION IS PREVALENT IN THE FEDERAL WORKPLACE ALSO. FROM THE BEGINNING OF WOMEN'S PARTICIPATION AS GOVERNMENT EMPLOYEES, THEY WERE SEGREGATED INTO LOW PAYING SEPARATE OCCUPATIONS. THE HEAD OF THE DEPARTMENT OF THE TREASURY, SPINNER, IS CREDITED FOR BRINGING FEMALE LABOR INTO THE GOVERNMENT SECTOR IN 1862. HIS RATIONALE WAS THAT "WOMEN CAN USE SCISSORS BETTER THAN MEN AND THEY WILL DO IT CHEAPER." HE HIRED WOMEN TO CUT TREASURY NOTES AT $600 PER YEAR AS TEMPORARY CLERKS. TODAY IN THE FEDERAL GOVERNMENT, WOMEN ARE CONCENTRATED INTO THE LOWEST GENERAL SCHEDULE GRADES (GS), EARNING THE LOWEST WAGES. SEVENTY-FIVE PERCENT OF ALL WOMEN IN THE GS PAY SYSTEM ARE IN GRADES 1 THROUGH 8 AND 85 PERCENT OF ALL WOMEN IN THE GS PAY SYSTEM ARE IN GRADES 1 THROUGH 9. ONLY 6 PERCENT OF ALL WORKERS IN THE EXECUTIVE PAY SYSTEM ARE WOMEN. THE EXISTENCE OF OCCUPATIONAL SEGREGATION IN THE FEDERAL GOVERNMENT IS OBSERVED EVEN MORE CLEARLY WHEN ONE STUDIES THE DETAILED OCCUPATIONAL LISTINGS. FOR EXAMPLE, EVEN THOUGH WOMEN ARE 80 PERCENT OF ALL CLERICAL WORKERS, THEY ARE 99 PERCENT OF THE SECRETARIAL SERIES (GS-5). WOMEN ARE 10 PERCENT OF ALL PROFESSIONAL EMPLOYEES, BUT 99 PERCENT OF ALL PUBLIC HEALTH NURSES IN THE PROFESSIONAL OCCUPATIONAL CATEGORY.

THE FACT THAT WOMEN ARE IN THE LOWEST GRADES DIRECTLY RESULTS IN FEDERALLY EMPLOYED WOMEN EARNING LOWER WAGES THAN MEN EMPLOYED BY THE FEDERAL GOVERNMENT. THE MEDIAN EARNINGS IN 1981 OF FEDERALLY EMPLOYED MEN WAS $22,676 PER YEAR AS COMPARED TO $14,414 PER YEAR FOR WOMEN. IN ADDITION, WITHIN EACH OCCUPATIONAL SERIES MEN EARN MORE THAN WOMEN (PROFESSIONAL, ADMINISTRATIVE, TECHNICAL AND CLERICAL). ALTHOUGH THE 1400 SERIES (LIBRARY AND ARCHIVES WORKERS) IS DOMINATED BY WOMEN, MEN'S ANNUAL WAGES ARE $25,154 PER YEAR AS COMPARED TO $21,010 PER YEAR FOR WOMEN.

THE OCCUPATIONAL CROWDING OF WOMEN IN CERTAIN JOB CATEGORIES COUPLED WITH WAGE DATA MAKES A STRONG CASE FOR DISCRIMINATORY PRACTICES IN THE FEDERAL GOVERNMENT. THESE PRACTICES MUST BE HALTED AT ONCE. THE CIVIL SERVICE REFORM ACT OF 1978 ENDORSED THE CONCEPT OF COMPARABLE WORTH AND SUGGESTED DEMONSTRATION PROJECTS BE IMPLEMENTED. THE TIME FOR ACTION IS NOW.

COMPARABLE WORTH FOR FEDERALLY EMPLOYED WOMEN MEANS THAT FEDERAL EMPLOYEES, REGARDLESS OF SEX, SHOULD BE PAID EQUALLY FOR JOBS THAT ARE OF COMPARABLE VALUE TO THE GOVERNMENT AS EMPLOYER (IN TERMS OF SKILL, EFFORT, AND RESPONSIBILITY). INHERENT IN THIS DEFINITION IS THE ASSUMPTION THAT THE EMPLOYER HAS A UNIFIED JOB EVALUATION SYSTEM WHICH CAN ASSIGN RELATIVE VALUE TO ALL JOBS, CREATING A SCHEME OF INTERNAL EQUITY. CAUTION MUST BE EXECUTED, HOWEVER, BECAUSE THE NATURE OF JOB EVALUATIONS MAKES IT POSSIBLE FOR SEXUAL BIAS TO ENTER. FOR EXAMPLE, WHEN DETERMINING WHICH FACTORS TO INCLUDE IN A

JOB EVALUATION AND TO WHAT DEGREE THEY SHOULD BE WEIGHED, THE SKILLS INVOLVED IN A "WOMAN'S JOB" ARE OFTEN ASSIGNED LESS IMPORTANCE.

GOVERNMENT OFFICIALS AT THE OFFICE OF PERSONNEL MANAGEMENT CLAIM THAT COMPARABLE WORTH IS NOT A PROBLEM IN THE FEDERAL SERVICE. THIS CLAIM IS BASED ON THE FACT THAT THE GOVERNMENT HAS A UNIFIED JOB CLASSIFICATION SYSTEM WHICH MEASURES ALL WHITE COLLAR JOBS BY THE SAME YARDSTICK AND THAT ONE SET OF DEFINITIONS APPLIES TO ALL GS LEVELS. IF THE FEDERAL SECTOR IS FREE OF SEX DISCRIMINATION IN JOB EVALUATIONS, WHY DO WOMEN EMPLOYEES CONSISTENTLY EARN LESS THAN THEIR MALE COUNTERPARTS?

THE GENERAL SCHEDULE WAS DESIGNED IN 1949 IN SUCH A WAY TO PRESERVE BOTH THE PAY AND THE JOB RELATIONSHIPS WHICH WERE ESTABLISHED IN THE 1923 CLASSIFICATION ACT. DEFENDERS OF THE GOVERNMENT'S SYSTEM POINT TO ITS ENDURANCE AS AN INDICATOR OF ITS VALIDITY. OTHERS ARGUE THAT SUCH AN ADMISSION IS STRONG EVIDENCE OF THE SYSTEM'S FAILURE TO RESPOND TO SOCIAL CHANGE AND ITS PERPETUATION OF SEX DISCRIMINATION.

IN THE 1970s THE JOB EVALUATION AND RANKING METHOD WAS FURTHER REFINED BY THE ADDITION OF THE FACTOR EVALUATION SYSTEM (FES). FES IS A PROGRESSIVE SYSTEM IN THAT IT DOES FORMALIZE AND RATIONALIZE JOB CRITERIA IN A SYSTEMATIC WAY. QUANTITATIVE MEASUREMENTS REPLACED NARRATIVE INTERPRETATIONS FOR ASSIGNING VALUES (AND HENCE WAGES) TO DIFFERENT OCCUPATIONS. THE PROBLEM STILL EXISTS, HOWEVER, ON THE RANKING OF FACTORS. MANY KEY COMPONENTS OF "WOMEN'S JOBS" ARE GROSSLY UNDERVALUED. SPEED AND FINE MOTOR REQUIREMENTS, NEGATIVE WORKING CONDITIONS, AND ADAPTING TO NEW TECHNOLOGY (COMPONENTS OF MANY CLERICAL OCCUPATIONS) ARE GIVEN LOW PRIORITY WHEN RANKING FACTORS IN JOB EVALUATIONS. DAILY CONTACT WITH OFFICIALS IS MORE HIGHLY VALUED THAN DAILY CONTACT WITH OTHER PEOPLE (SUCH AS PATIENTS). TAKING CARE OF PEOPLE IS LESS VALUED THAN OPERATING MACHINES. HEAVY LIFTING IS MORE HIGHLY VALUED THAN REPEATED LIGHT LIFTING, AND SO ON. THE NINE FACTORS THAT ARE USED IN EVALUATING JOBS AND THE VALUE ASSIGNED TO EACH FACTOR IS BASED ON OUTMODED VALUE JUDGMENTS AND PERCEPTIONS. STUDIES HAVE BEEN DONE BY NUMEROUS COMMISSIONS, UNIONS AND PERSONNEL DEPARTMENTS WHO ALL SUPPORT THE CONCLUSION THAT PUBLIC SECTOR WORKFORCES ARE SEX SEGREGATED AND SEX DISCRIMINATION IS AN INHERENT PART

OF THE JOB EVALUATION SYSTEM. THOROUGH ANALYSIS OF THE FEDERAL CLASSIFICATION SYSTEM MUST BE DONE TO DETERMINE THE EXTENT OF THE SEX BIAS IN ORDER TO BEGIN TO CORRECT IT.

THE EQUAL PAY ACT OF 1963 AND TITLE VII OF THE CIVIL RIGHTS ACT ARE THE BASIS FOR CORRECTING SEX DISCRIMATION IN THE LABOR MARKET. IN GUNTHER V. COUNTY OF WASHINGTON (S. CT. 1981), THE SUPREME COURT APPLIED A BROAD INTERPRETATION TO TITLE VII AND RULED THAT WOMEN IN SEX SEGREGATED OCCUPATIONS ARE ENTITLED UNDER TITLE VII TO OFFER PROOF THAT DEPRESSED WAGES ARE IN PART DUE TO PURPOSEFUL INTENTIONAL DISCRIMINATION BECAUSE OF SEX. ALTHOUGH THE GUNTHER DECISION DOES NOT DIRECTLY AFFECT THE FEDERAL GOVERNMENT, THE IMPLICATIONS ARE CLEAR. THE RECENT DECISION BY JUDGE TANNER IN AFSCME V. STATE OF WASHINGTON (WA. S. CT. 1983) IS ALSO VERY SIGNIFICANT. FIFTEEN THOUSAND WOMEN WORKING FOR THE STATE OF WASHINGTON WILL RECEIVE PAY INCREASES BECAUSE THEIR JOBS ARE COMPARABLE TO HIGHER PAID JOBS HELD BY MEN. THIS CASE IS THE STRONGEST FEDERAL ENDORSEMENT TO DATE FOR COMPARABLE WORTH.

THE EQUAL PAY ACT OF 1963, TITLE VII OF THE CIVIL RIGHTS ACT, EXECUTIVE ORDER 11246, AND THE CIVIL SERVICE REFORM ACT OF 1978 ALL AFFIRM THE NEED FOR COMPARABLE WORTH. FULL ENFORCEMENT OF THESE LAWS IS A NECESSITY TO ERASE SEX DISCRIMINATION IN EMPLOYMENT.

THE PASSAGE OF H.R. 4599, "THE FEDERAL EMPLOYEES PAY EQUITY ACT OF 1984" AND H.R. 5092, "THE PAY EQUITY ACT OF 1984" WOULD ACCOMPLISH MANY GOALS. THE OFFICE OF PERSONNEL MANAGEMENT'S STUDY OF WAGE PRACTICES AND POSITION CALSSIFICATION IN THE FEDERAL GOVERNMENT WOULD CLEARLY SHOW THAT A WAGE GAP EXISTS. AGENCY PARTICIPATION WILL BOTH HEIGHTEN AWARENESS AND INCLUDE THE AGENCIES IN ACCOUNTABILITY. SETTING GUIDES FOR EEOC WILL ENCOURAGE STRICTER ENFORCEMENT OF TITLE VII. WE APPLAUD YOUR EFFORT, MADAM CHAIR, TO CORRECT PAY INEQUITIES IN THE GOVERNMENT. FEW SUPPORTS BOTH H.R. 4599 AND H.R. 5092 AND WE LOOK FORWARD TO WORKING WITH YOU ON THE PASSAGE OF THIS LEGISLATION.

THERE ARE MANY COMPELLING REASONS WHY PAY EQUITY SHOULD BE REALIZED IN OUR SOCIETY. WOMEN HAVE THE SAME EXPENSES AS MEN AND SHOULD NOT BE PENALIZED

BECAUSE OF THEIR SEX. THE WAGE GAP HAS CONTRIBUTED TO THE GROWING NUMBERS OF WOMEN AND CHILDREN WITH INCOME BELOW THE POVERTY LEVEL. WOMEN HEADING HOUSEHOLDS AS WELL AS ELDERLY WOMEN ARE INCREASINGLY LIVING IN POVERTY. RETIREMENT ANNUITIES ARE DEPENDENT ON ONE'S LIFETIME EARNINGS. LOW WAGES DIRECTLY TRANSLATE INTO SMALL PENSIONS. THIS IS A PROBLEM SHARED BY WOMEN IN BOTH PRIVATE AND PUBLIC EMPLOYMENT. THE MEAN AMOUNT OF A WOMAN'S FEDERAL PENSION IN 1982 was $7,541 PER YEAR AS COMPARED TO $13,767 FOR MEN.

FEW URGES THIS COMMITTEE TO VIGOROUSLY PURSUE THE ISSUE OF PAY EQUITY IN THE FEDERAL SECTOR, AS WELL AS IN THE PRIVATE SECTOR. THE GOVERNMENT SHOULD ACT AS A MODEL EMPLOYER FOR THE PRIVATE SECTOR TO FOLLOW. ELIMINATING WAGE DISPARITIES BETWEEN MEN AND WOMEN IN COMPARABLE JOBS IN THE FEDERAL GOVERNMENT AND ESTABLISHING BIAS FREE JOB EVALUATIONS WOULD ENCOURAGE THE PRIVATE SECTOR TO FOLLOW SUIT. WE HOPE THE DAY IS NEAR WHEN JOBS ARE NOT DEFINED BY THE SEX BUT BY THE SKILLS AND RESPONSIBILITY NEEDED TO PERFORM THOSE JOBS.

THANK YOU, MADAM CHAIR, FOR ASKING US TO TESTIFY HERE TODAY. WE WOULD BE HAPPY TO ANSWER ANY QUESTIONS FROM THE COMMITTEE.

Ms. **Oakar**. Thank you very much. I want to congratulate you on your new appointment. Probably the one thing that I agree with Dr. Devine on is this recently inspired activity that he had enough good sense to appoint you the Chair. So, good luck with it.

Ms. **Burton**. Thank you very much. And, I hope that maybe Dr. Devine does share some of our concern, and can see that my presence there is moving in the direction that we are——

Ms. **Oakar**. I only have a positive influence, I am sure.

Ms. **Burton**. I hope so. Thank you very much.

Ms. **Oakar**. The next witness is Cheryl Wainwright from Nine to Five.

STATEMENT OF CHERYL WAINWRIGHT, FORMER VICE PRESIDENT OF 9 TO 5 NATIONAL ASSOCIATION OF WORKING WOMEN

Ms. **Wainwright**. Thank you, Madam Chair and subcommittee members for inviting me to testify about this important piece of legislation.

My name is Cheryl Wainwright. I am a member and former vice president of 9 to 5 the National Association of Working Women. I am also a full-time clerical workers.

9 to 5 is a national membership organization of office workers with 12,000 members and 21 chapters around the country. Our goal is to improve the status of women office workers by upgrading pay, gaining respect, and insuring our rights are protected on the job. We strongly support the proposed Pay Equity Act of 1984, H.R. 5092, which will insure strong enforcement of pay equity.

The past decade was a period of debate about the status of women workers. Now that debate is over. There is no question that women's work is characterized by discrimination. Every measure proves it. We average 59 cents to every dollar earned by man. We can't go into a store and say to the cashier, "Surely as you can see, I am a women, but by me making only 50 cents to a man's dollar, I am sure you would not mind if I only paid 59 percent of the total bill."

Recent Department of Labor statistics show that women earn considerably less than men in every field. Women with college degrees earn less on the average than men with high school diplomas. And highly skilled clericals, nurses, women in other women's jobs earn far less than men working as warehousemen, grocery baggers and parking lot attendants.

Women are segregated into the largest paying job categories in the labor force. Job segregation is so severe that in 1982 more than 50 percent of all female workers were concentrated, and 20 of the total 427 occupations.

One of those occupations is clerical work. In the mid-1800's clerical work was dominated by middle class males and paid very good wages. By the 1940's, women dominated the clerical work force, and it was no longer a well paying occupation.

Today, office workers are the largest sector of the work force; 20 percent of all workers are clericals. And more than one-third of all women workers are clericals.

The typical work is no longer a man in a hard hat, but a women at a typewriter or rather a keyboard as typewriters are replaced by video display terminals.

Office work is one of the few growing sectors of the work force and is the fastest growing.

Despite our importance to the Nation's economy, we are among the lowest paid of all workers, earning less than every type of blue collar worker. The average woman clerical's salary hovers around $12,000.

Office workers are trapped in a job ghetto; 80 percent of all workers are women, and 98 percent of all secretaries are women.

Job segregation in the office is so severe that a woman clerical who feels underpaid can rarely find a man doing equal. For example, similar work to compare herself to. When she does find this one, he usually earns $4,000 a year more than she does.

Our low wages may reflect the prevailing rates of office work, but our pay is the rude violation of the spirit of the equal employment laws.

Why are women concentrating in job ghettos? And why are our wages low in relative to other workers?

9 to 5 maintains that employees create and maintain a female job ghetto by discriminating and hiring, promotion, transfer and pay.

9 to 5 have hundreds and hundreds of cases of discrimination, our members have encountered over the last 10 years in every State of the Union. And 9 to 5 members write to us regularly with complaints of wage discrimination.

For example, a study of public employees in Newark, N.J., found that auto mechanics earn 45 percent more than senior stenographers in 1980. Both are equally skilled jobs, but auto mechanics are all men, and stenographers are all females.

Another public employee study in Minneapolis, Minn., shows mid-level clerk typists earning $13,124 and sanitation workers earning $23,712. Both jobs require equal levels of skill and responsibility but the typists are mostly females, and the sanitation workers are mostly males.

9 to 5 members in Muncie, Ind., conducted a study of wage classification at Ball State University where they were employed. They found that high level clerical workers, mostly females, earned 21 percent less than entry level custodian workers, mostly males.

When the clerical workers seized the opportunity to earn more pay by applying for the custodial positions, they were informed that they were overqualified for those jobs.

The consequences of wage discrimination help to account for the increasing poverty among women of all ages. One-third of the 9 million females headed households in the United States are at poverty level. One in five women will be poor in her old age.

Clearly wage discrimination laws are not adequately enforced. When our members encountered discriminatory situations and take cases to the Equal Employment Opportunity Commission, they are discouraged by the immense backlog and incredibly slow processing of cases.

Few office workers can afford the time and the ongoing mental anguish which are currently required to take a case to the agency.

Many who are suffering discrimination do not bother to take cases to the EEOC because the process is so discouraging. They do not feel that their cases will be taken seriously.

And in this situation, many employees see no reason to fear the agency's regulatory powers. They feel free to not deal with pay equity problems.

Now is the time to take serious action to readdress these inequities and realize the true spirit of employment opportunity laws. The proposed Pay Equity Act of 1984 will accomplish this by pressing enforcement agencies to take action on pay equity cases.

9 to 5 supports H.R. 5092 because it will begin to address those problems.

As a short-term strategy, the bill will help working women who are taking cases to the agencies receive more prompt remedies. In the long run as attention is drawn to these issues, pay equity enforcement, employers who have been lax in addressing pay equity problems will see that it is no longer to their advantage to do so.

Again, thank you, Madam Chair and the members, for truly, I appreciate the opportunity to come before you today.

Ms. OAKAR. Well, thank you, Cheryl. I am only sorry that the head of EEOC could not hear your testimony. Maybe we can see if we can get it over to him. Sometimes I think that instead of having a hearing we should be conducting a debate on the issue.

We want you to know, since the Chair represents Cleveland, Ohio, how proud we are of 9 to 5, which has its roots in Cleveland.

Our next witness is, Ms. Catherine Waelder who is the general counsel for the National Federation of Federal Employees.

STATEMENT OF CATHERINE WAELDER, GENERAL COUNSEL FOR THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Ms. WAELDER. Madame Chair, I am pleased to appear before the subcommittee today on behalf of the National Federation of Federal Employees to support two bills, H.R. 4599 and H.R. 5092, which the chairwoman has introduced to promote pay equity in the work force, and particularly in the Federal Government.

NFFE has long taken an active role in seeking to promote pay equity within the Federal work force. We joined in an amicus brief in the *Gunther* case, the first Supreme Court case to touch upon the concept of comparable worth in the evaluation of different jobs held by male and female workers. And to allow a suit based upon title VII, due to the documented wage disparity between those jobs.

We have been an active member of the Federal sector caucus of the Committee on Pay Equity. The delegates to our last biannual convention adopted a resolution which reads:

> Whereas women are concentrated in service and support jobs where salary levels are lower than in fields where men predominate. Therefore, be it resolved that the NFFE support legislation to achieve pay equity for women by eliminating policies which set pay at lower levels for jobs which are traditionally held by women, and jobs traditionally held by men.

And NFFE represents a large number of women in female dominated occupational classifications, principally nurses and health care professionals in the Veterans' Administration, teachers in the Bureau of Indians Affairs, and clerk typists and secretaries throughout the Government.

On September 30, 1982, NFFE appeared before a joint hearing of the Civil Service Subcommittee. The Human Resources Subcommittee and the Compensation and Employee Benefit Subcommittee to testify for a need for the thorough review of the obstacles to achieve pay equity in the Federal Government.

The introduction of H.R. 4599 and H.R. 5092 along with today's hearings mark an important step toward identifying and overcoming the obstacles that we discussed 3 years ago.

Both bills also go a long way in reaffirming the fact that wage discrimination still exists within the Federal Government, and that it primarily affects women.

H.R. 4599 and H.R. 5092 both contain congressional findings that women generally earn less than men because jobs held predominantly by women usually provide lower compensation than those held predominantly by male workers. Although women have increased as a percentage of the total work force, this wage disparity persists. Women receive approximately 59 cents for each dollar earned by a man, and this represents a 5 cent decrease since 1957 when the ratio was 64 cents to every dollar. [A related, often overlooked consequence of wage disparity is the likelihood that the disparity will continue into retirement. Because many pension plans, including the Civil Service Retirement System, factor earnings into retirement compensation, women continue to be penalized upon retirement for inequitable employment and wage practices.]

Within the Federal Government women continue to be concentrated in the lower paid grades. Congressional findings in your bills that women generally earn less than men, because jobs held predominately by women usually provide lower compensation, than those held predominately by male workers is certainly very appreciated.

The concentration of women in the lower paid grades exaggerates the problem of pay inequity. Although, women represent 3 percent of the civil service work force, and more likely to be selected for work of a clerical or support nature.

In 1980 women represented 51 percent of the Federal clerical work force; 43 percent of the technical work force; and only 23 percent of the professional work force. It comes as no surprise then, that women employed by the Federal Government that year received annual salaries of about $16,000.00 compared to the average man salary of about $21,000.00.

The need for studies comparing male dominated and female dominated jobs is vital to the implementation of equal pay for jobs of equal value.

Job evaluation studies were critical to the plaintiff success in the *Gunther* case as well as in the recent District Court judgment in AFSCME the State of Washington.

We think the requirements of H.R. 4599 and H.R. 5092 charging the EEOC and the Office Personnel Management with the responsibility for conducting research to develop methods and techniques, for identifying and measuring discrimination in wages are vital to this effort. And, I believe these are important steps in the right direction.

The fact that women are paid less than men in both the private and public sector is indisputable although the reasons for the obvious pay disparity are controversial. At the heart of wage inequity seems to be the long-held attitude that women are the "weaker sex" and the female-dominated jobs are therefore "worth" less than jobs held by men, and should be compensated as such. Likewise, men have traditionally been perceived as the "breadwinner" and supporter of the family, thus needing higher wages. This notion, perhaps above all misconceptions, is highly discriminatory and entirely fallacious. Salaries should not be designed on the basis of need. If this practice were followed, men with larger families would be better compensated than men with smaller or no familes.

Employers in both the public and private sector need to stop thinking in these terms and instead concentrate more on the worth of their employees' work. Generally defined, comparable worth is the idea that equal salaries should be paid for jobs that require comparable effort, skill and responsibility.

The principle of comparable worth supports the development and application of a bias-free evaluation system that uses objective criteria to assess any given occupation.

Despite the clearly defined objectives of comparable worth the concept has yet to be realized because of the failure to reach a consensus in judging worth and finding a job evaluation system and classification standards that adequately assesses worth.

Many of the standards in job evaluations are outmoded and continue to be weighted against women.

A comprehensive study of the classification standards used by the Federal Government in its job evaluation system is long overdue.

NFFE supports the language in H.R. 4599 that requires OPM to complete a thorough review of the extent of wage discrimination within the Government's position classification system; to recommend equitable job evaluation techniques to correct these discrepancies, and to develop a timetable for implementing their recommendations.

If enacted H.R. 4599 could force OPM to take a significant step toward resolving the wage classification disparity within the Federal work force. Although the Federal Government has attempted in the past to update its evaluation system, the necessary forms to correct wage discrimination were not made.

In 1975, a new factor evaluation system [FES] was designed to replace the old narrative system with one based on nine factors—knowledge required by position, supervisory control, guidelines, complexity, scope and effect, personal contact, purpose of contacts, physical demands, and work environment. Each is assigned a specific range of points. The factors are subdivided into levels which determine the total points a job may receive based upon the position description. When the points are tallied, they are matched to a conversion table that determines the grade based on the total number of points.

Although OPM may claim that the FES is a bias-free, quantitative evaluation system, the FES has nevertheless failed to objectively assess the value or worth of most female-dominated jobs. The new system still relies on outmoded value judgments and standards. Because the standards used are not continuously revised, they frequently fail to account for the ability needed to use the developing technological resources essential in many professions (i.e., data processing knowledge and word processing skills). The factors applied to job descriptions tend to be weighted against or fail to account for traditionally female "skills" because they do not recognize the value of such skills.

The factor which assesses personal contact in any given occupation provides a good example of the biases within the FES. The factor assigns few points to positions where contacts are with coworkers or which require the answering of simple questions from the public. High points, however, are assigned to positions which require contacts with high status professionals or high ranking officials. Therefore, a nurse who must deal primarily with coworkers and must assist patients and their families by relying on tact, expertise and professionalism will receive fewer points than a hospital administrator who uses the same skills. The end result is that typically "female" jobs continue to be given lower grade status.

Classification disparities continue to plague many female-dominated professions, and OPM has generally failed to undertake a fair consideration of them. NFFE has continuously encountered the refusal of both OPM and agencies to undertake a position-to-position job review in classification appeals. OPM has only been willing to compare an employee's position with the standards for her series, a practice frowned upon by the courts. In *Haneke* v. *Secretary of HEW,* 535 F.2d 1291 (D.C. 1976), the court held that in processing classification appeals OPM's predecessor, the Civil Service Commission violated 5 U.S.C. 5101 when it refused to do position-to-position comparisons. Thus, in a situation where two people are doing the same or comparable work under different job series, classifiers refuse to make essential comparisons.

Pay equity does not exist for federally employed women. While limited remedies are available to combat situations of wage inequity or discrimination once they have occurred, the root of the problem remains unchanged. In spite of the equal pay provision in title V, the structure of pay and classification standards precludes pay equity. Implicit in the grading system are societal values which are often sexually biased. The actual process of assigning particular jobs to particular grades is also inherently subjective, and sex role stereotyping is common. The result is the underevaluation of jobs held predominantly by women. Finally, the mechanics of the system, such as career training, prevents upward mobility out of gender-dominated jobs.

The thorough review of the position-classification system called for in H.R. 4599 is therefore essential. When NFFE testified in September 1982 on the issue of pay equity, we called for such a study and stated that "OPM should undertake an ongoing review of the skills required in most female-dominated occupations and update their relative value and worth." H.R. 4599 would require OPM and other Federal agencies to take this step toward identifying gender-biased job standards and correcting them. It is NFFE's hope that upon enactment of H.R. 4599 the administration will carry out the bill's mandate in a fair and timely manner.

NFFE also recommends the following legislative changes we advocated in 1982 and which we continue to support. We believe it would be helpful to delete the exclusion of classification appeals from the grievance procedure found in title 5, United States Code, section 7121(c)(5) to allow classification decisions to be grieved and arbitrated as they are in the private sector. Currently, OPM has the only word on classification appeals. The system could be improved if employees had an opportunity to have third party review of the classfication decision. Second, we think OPM should be required to do position-to-position comparisons when evidence of misclassification based on such comparisons is raised in an appeal.

Third, we feel it would be useful to bring the language of the classification section of the statute, title 5, United States Code, section 5101, into line with the principle of the Civil Service Reform Act that equal pay be provided for work of equal value. The statute currently says that equal pay will be provided for substantially equal work. It is closer to the Equal Pay Act standard than to the pay equity standard embraced in the preamble in section 2301 of the Civil Service Reform Act. We would like to put the concept of pay equity into a part of the statute where it can do more substantive good and can be better used as a tool for pay equity.

Finally, we believe that the statute should be amended in section 5596 to provide retroactive pay in classification appeals, overruling the *Testan* case, a Supreme Court case which held that retroactive pay was not provided for by current statute.

In conclusion, NFFE also strongly supports the intent of H.R. 5092 to identify discriminatory wage-setting practices, to promote pay scales based upon the "worth" of work performed by an employee and to insure that Federal workers are given equal pay for work of equal value. The bill calls upon the Equal Employment Opportunity Commission, the Secretary of Labor, and the Attorney General to report to the President and Congress on their enforcement of wage discrimination prohibitions. Once again, this requires full cooperation from the administration. Not only must adequate funding for these agencies be included in the President's annual budget requests, but each agency must also work diligently to develop the means to insure pay equity becomes a part of the Federal wage system.

That concludes our statement. I would be pleased to answer any questions you might have.

Ms. **Oakar**. Thank you very much. I appreciate your suggestions concerning the legislation.

The reason I smiled when you were talking about—adequate funding for the bill, was because EEOC stated that inadequate funds was a reason why they opoposed it. But we are talking about some staff people that they had cut.

Ms. **Waelder**. Just a few years ago in this administration.

Ms. **Oakar**. If they just put back the staff that they cut, they will be fine. And it is a few thousand dollars.

Our last witness—and we certainly are happy to have you here as well—is Ms. Cynthia Denton, who is the general counsel for the National Association of Government Employees.

STATEMENT OF CYNTHIA DENTON, GENERAL COUNSEL FOR THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Ms. DENTON. Thank you. Good afternoon, Madam Chair. My name is Cynthia Denton. I am general counsel with the National Association of Government Employees. We are an affiliate of the Service Employees International Union. We are very pleased to have this opportunity to present our views on the Pay Equity Act of 1984 and the Federal Pay Equity Act of 1984.

The NAGE, which represents employees in all sections of public service, strongly supports the efforts to create pay equity represented by both H.R. 4599 and H.R. 5092.

This legislation reaffirms the Federal Government's responsibility in enforcing pay equity laws, encourages employers to comply with those laws, and brings Federal wage-setting practices into compliance with existing law.

We would like to address our remarks this afternoon to two areas: First, the failure of the EEOC to enforce the existing laws in the area of pay equity as demonstrated by a complaint filed by the NAGE in Boston.

Second, the failure of the Federal Government to address pay equity problems within its own work force.

The NAGE represents a unit of over 10,000 clerical employees working for the Commonwealth of Massachusetts.

The Massachusetts experience for these working women has been no different from that of working women nationwide. In a review of the Commonwealth's employment practices in 1979, the Massachusetts Commission Against Discrimination found that 75 percent of the State employees in the lowest job grades were women, while over 80 percent of the male employees were found in the three highest job grades.

This inequitable job grouping is a result of legislation which, prior to the establishment of public sector collective bargaining set the salaries of all State employees.

Clerical workers obviously occupy the lowest divisions of the general service scale.

A comparison of the two salary structures approved by the Massachusetts Legislature in 1948 shows that the lowest paid common laborer in the State made a wage comparable to a grade 15 in the general service scale. In recognition of the comparably poor pay scale of clerical employees in the State, which continues to date, the National Association of Government Employees filed a class action charge of discrimination with the Equal Employment Opportunity Commission claiming that, among other things, the Commonwealth has created and maintained a classification in salary system which has discriminatorily compensated certain positions normally encumbered by females to the lower job groups for no other reason than because of the sex of the incumbents.

The charge has been before the EEOC since August 1981. The only action on that case in 2½ years of which we are aware has been a 2-day on site investigation by an employee of the EEOC New York Office.

The EEOC has demonstrated an attitude of outright indifference to claims involving pay equity.

The decision of the U.S. Supreme Court in June 1981 in the *Gunther* v. *County of Washington* case, cleared the way for pay equity cases to be filed under title VII without meeting the requirements of equal work contained in the Equal Pay Act.

While a number of pay equity cases have been successfully won for employees in the Federal courts since that time, to our knowledge, the EEOC has yet to decide a case based on the principles of pay equity and comparable worth.

Our charge of discrimination is being referred to the Washington Office of Policy Implementation for decision apparently since the EEOC has no clear standards for review in these cases.

The agency, which ought to be at the forefront in enforcing the federally mandated policy of equal pay for work of equal value, has taken no action to establish case law in the area of pay equity.

The decision not to enforce EEOC laws in the pay equity area is a political decision, and its remedy is also political.

As a party with some experience in seeking relief before the EEOC, the NAGE applauds H.R. 5092, which sends a clear message to that agency to take swift action on pay equity cases.

The NAGE also represents large numbers of employees in the Federal Government. Historically, the Federal Government led the way in the hiring of women, but, unfortunately, has also led the way in the intentional payment of discriminatory wages.

When women first entered the work force in large numbers during the Civil War, period the Federal Government led the way in their employment by giving preference to widows of war veterans. However, it also led the way in setting women's wages at a discriminatory level.

Today, women in the Federal Government are paid less than men because of a classification system which is biased against the skills, responsibilities, and duties of predominantly female jobs. The Federal Govermment must reverse this trend and take the lead in the payment of a gender neutral compensation. These bills are a vigorous step in that direction.

Both H.R. 5092 and H.R. 4599 direct Federal agencies to rid themselves of the discriminatory wage setting practices.

H.R. 5092 requires the EEOC to conduct a study in consultation with federal employee organizations, on the procedures used to evaluate Federal practices, and whether those procedures comply with pay equity law.

H.R. 4599 requires OPM to submit to Congress a study on wage setting practices, and wage differentials, and to develop a proposal on equitable job evaluation techniques, and to specify and take those steps needed to correct the problem.

The NAGE endorses both these bills as a sound and equitable measure which will help identify and correct the bias in wage setting practices.

We would like to thank the committee again for the opportunity to present our views, and look forward to working with the committee in the passage of these important pieces of legislation.

[The statement of Ms. Denton follows:]

TESTIMONY OF
THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Madam Chair, the National Association of Government Employees which is an affilliate of the Service Employees International Union (AFL-CIO) is pleased to have this opportunity to present our views on the Pay Equity Act of 1984 (HR 5092) and the Federal Pay Equity Act of 1984 (HR 4599).

The N.A.G.E. which represents employees in all sections of public service strongly supports efforts to create pay equity in our society. We strongly support both HR 4599, and HR 5092, legislation which reaffirms the federal government's responsibility in enforcing pay equity laws, encourages employers to comply with those laws, and brings federal wage setting practices into compliance with existing law.

Long since the passage of the Civil Rights Act, sex discrimination still pervades the wage setting and compensation practices of our nations private and public sector employees. Figures gathered by a score of different statisticians reveal that women are segregated into a few dead end jobs. Female dominated jobs are paid significantly less than their comparable worth based on the skills, duties, and responsibilities of the jobs. As a result of this discrimination women make up a disproportionate share of our nation's poor. Efforts by unions and others to address these serious problems have been frustrated by the failure of the Equal Employment Opportunity Commission to fullfill its statuatory mandate.

Sex segregation in employment in the United States is pervasive. According to 1981 Bureau of Labor Statistics, 64% of all female employees are in positions that have more than two females to every male. 63% of all males work in jobs which are more than two to one their own gender. Of the 400 positions listed by the Department of Labor, 80% of all women work in only 25 occupations. In fact over 35% of all employed women work in secretarial and clerical fields. In the secretarial field, women account for over 99% of all employees with similarily large concentration in clerical, nursing and cleaning positions.

In 1980 the median income of all working women was $11,287 while the median income of all men was $18,910. Currently, women earn approximately 60¢ for every dollar earned by a male. These low discriminatory wages have lead to the so called feminization of poverty. According to the Department of Commerce in 1981, over 34% of all households headed by females alone had incomes below the poverty level. In that same year 10.3% of the households headed by males alone had incomes below the poverty level. Poverty among women has been severe, and it has been rapidly increasing. According to the National Advisory Council on Economic Opportunity, "if the poor who are in female headed families were to increase at the same rate it did from 1967 to 1977, the poverty population would be composed solely of women and their children by the year 2000."

Virtually every employer that hired women prior to the passage of the Civil Rights Act deliberately sex segregated its workforce and paid its female employees a discriminatory wage. All paid employment opportunities outside the home were at one time held predominantly, if not exclusively, by men. Not until the period of the Civil War in the U.S., during a time when males were serving in combat, did the number of women in the job market increase dramatically. The additional pressure of inflation during that time made it an economic necessity for women to begin to supplement the family income by seeking outside employment. As every historian and economist will attest, as women entered the job market, wages fell. The two most available and desirable occupations for young women at that time were retail sales and clerical.

Whereas only 3.3% of all office workers were female in 1870, by 1900 that percentage had risen to 75.7% of all stenographers and typists, 12.9% of all clerks, and 28.6% of all bookkeepers and accountants. As this transition occurred, the wages for these positions were correspondingly depressed by intentional, blatant discrimination against women workers.

The attitude typical of employers at this time was expressed by the Treasurer of the United States in 1862, General Francis Elias Spinner when he said: "A woman can use scissors better than a man, and she will do it cheaper. I want to employ women to cut Treasury Notes." Women were therefore preferred for the low-paying, menial tasks because they were paid no more than 50 per cent of the wages paid to men.

While the federal government during this time led the way in employing women, giving preference to war widows and children of soldiers killed in action, it also led the way in setting wages at a discriminatory level. For example, in 1866 Congress set the salaries for female clerks and copyist at $900 a year while at the same time paid men doing similar work $1200 to $1800 per year. The salaries of the women hired as temporary clerks for the Department of Treasury at General Spinner's urging were alloted a maximum of $600 per year while their male counterparts earned $1200 to $1800 per year. Other public sector and private sector employers took their cue from the federal government and began using a dual pay scale in those jobs where women were determined fit to be employed - in the low paying dead end jobs where women remain concentrated today.

The Supreme Court held over thirty years ago that segregation and equality cannot co-exist in the landmark case of Brown V. Board of Education. The Supreme Court finding that segregation is inherently unequal applies also to sex discrimination in the workplace. A sex segregated job structure historically based on an implicit assumption of female inferiority is violative of the principle of equality. Unfortunately efforts by unions and others to develop and enforce pay equity have been severely hampered by the Reagan Administration. Under the current administration the EEOC has failed to take any action to enforce pay equity law. The EEOC has abandoned its mission to use its expertise to develop, educate, and enforce the law in this complex area.

An example of the EEOC's neglect can be illustrated from a complaint NAGE filed on behalf of the state employees working in clerical positions in the Commonwealth of Massachusetts.

The Massachusetts experience for working women has unfortunately been no different than that of women nation-wide. In a review of the Commonwealth's employment practices in 1979, the Massachusetts Commission Against Discrimination found that 75% of the state employees in the lowest job grades were women while over 80% of the male employees were found in the three highest job groupings. A review of the lowest job grades in Massachusetts and the job titles within those groupings show the extent of the problem for the 12,000 state clerical employees: jr. clerk and typist - job grade 4, jr. clerk and stenographer - job grade 5, senior clerk and typist - job grade 7, senior clerk and stenographer - job grade 8. In comparable job grades are male-dominant, non-skilled positions such as general handyman-job grade 5, storeroom helper - job grade 6, laborer - job grade 8.

This inequitable job grouping along with the corresponding minium salaries, is a result of legislation which, prior to the establishment of public sector collective bargaining, set the salaries of all state employees. For organizational purposes, the work force was divided into "labor service" and "general service." Clerical workers, of course, occupied the lowest divisions of the general service. A comparison of the two salary structures approved by the Massachusetts legislature in 1948 shows that the lowest paid common laborer in the state made a wage comparable to grade 15 in the general service.

In recognition of the comparably poor pay scale of clerical employees in this state, the National Association of Government Employees filed a class-action Charge of Discrimination with the Equal Employment Opportunity Commission claiming that, among other things, the Commonwealth has created and maintained a classification and salary system which has discriminatorily compensated certain positions normally encumbered by females to the lower job groups for no other reason than because of the sex of the encumbents.

The charge filed on behalf of Massachusetts clerical employees has been before the Equal Employment Opportunity

Commission since August,1981. The only action on that case in two and a half years of which we are aware has been a two day on-site investigation by an employee of the New York office. If the experience of other complaints is similar to that of the NAGE then it shows an attitude of hesitation if not outright indifference to claims involving pay equity which ought to be swiftly corrected.

The decision of the United States Supreme Court in June, 1981, in the Gunther v. County of Washington case cleared the way for pay equity cases to be filed with the Equal Employment Opportunity Commission without meeting the requirements of equal work contained in the Equal Pay Act. While a number of pay equity cases have been successfully won for employees in the federal courts since that time, to our knowledge the Equal Employment Opportunity Commission has yet to decide a case based on the principals of pay equity and comparable worth. Our Charge of Discrimination is being referred to the Washington Office of Policy Implementation for decisions since the Equal Employment Opportunity Commission has no clear standards for review of these cases.

Temporary guidelines were issued by the Equal Employment Opportunity Commission shortly after the Gunther decision, and extended beyond their original 90-day life. However, no apparent action has been taken by the Equal Employment Opportunity Commission, the agency which ought to be at the forefront in enforcing the federally mandated policy of equal pay for work of equal value, to establish case law in the area of pay equity. If required by this legislation to review all pending charges and to report to the appropriate Congressional Sub-committees on their status as well as to take administrative action to enforce the policy clearly enunciated in H.R. 5092, the Equal Employment Opportunity Commission may begin to assume its proper leadership role and provide a necessary forum for the resolution of pay equity charges.

The decision not to enforce EEOC laws in the pay equity area is a political decision and its remedy is also political. As a party with some experience in seeking relief before the

EEOC, NAGE applauds HR 5092 which sends a clear message to that agency to take swift action on all pay equity cases. HR 5092 redirects the EEOC towards accomplishing its statuatory mission of providing technical guidance and enforcing pay equity laws. This legislation encourages the EEOC to promote wages based on worth not sex, and to educate the public on sex discrimination. The EEOC is directed to identify discriminatory wage practices and to provide Congress with the results of a study on the number, nature and location of all charges. The Department of Labor and the Attorney General are similarily directed to fullfill their statuatory roles in pay equity.

The NAGE also represents large numbers of employees in the federal government. Historically the federal government led the way in the hiring of women, but unfortunately has also led the way in the intentional payment of discriminatory wages. The federal government must reverse that trend and lead in the payment of a gender neutral compensation. These bills are a vigorous step in that direction.

Sex segregation and discrimination in the federal government is at least as pervasive as in the private sector. In the blue collar field over 90% of all federal employees are male. In the white collar area 40% of all federal workers are women. Almost 2/3 of federally employed women work in jobs which are two to one female. While almost 2/3 of the men work in jobs which are more than two to one male. Women employed by the federal government are segregated into a small number of job groups. These female dominant jobs are paid less than their true worth and significantly less than similar positions held predominantly by males. The average female in federal service earns only 63¢ for every dollar earned by a male. Women in the federal sector account for the vast majority of federal employees at the lowest federal grades. Over 80% of all federal white collar women are employed in grades one through nine. By comparison only 39% of the total male population is in grades one through nine.

Women are paid less than men because of a classification system which is biased against the skills, responsibilities and duties of predominantly female jobs. The general schedule classification system was originally developed through the Classification Act of 1923. In 1949 a formalized procedure was established for classifying positions into one of 18 grades. This G.S. classification system was developed at a time when wage based sex discrimination was blatantly practiced. Females were relegated to a few positions and intentionally paid a lesser salary than her male counterpart solely because of her gender. The standards for evaluating the grades has been infected by this attitude of female inferiority.

In 1975 the General Schedule was quantified by usage of a factor evaluation system. The FES does not modify or amend the standards used for determining the grades. As concluded by a National Academy of Sciences Report,the FES does nothing more than standardize (through use of factor points) the classification standards. The 18 grades are left intact and so is the procedure for making GS grade assignments. In the sixty plus years since the passage of the Classification Act, the standards have not appreciably changed except that sex discrimination is now implicit rather than explicit. The FES fails to objectively assess the value of most female jobs because it relies on value judgements and standards developed fifty years ago.

The federal government must be a leader in pay equity. Both HR 5092 and HR 4599 direct federal agencies to rid themselves of discriminatory wage setting practices. HR 5092 requires the EEOC to conduct a study in consultation with federal employee organizations on the procedures used to evaluate federal practices and whether those procedures comply with equal pay for equal work laws. HR 4599 requires OPM to submit to Congress a study on wage setting practices and wage differentials and to develop a proposal on equitable job evaluation techniques and to specify and take steps needed to correct the problem.

NACE endoreses both HR 5092 and HR 4599 as a sound and equitable measure which will help identify and correct the bias in wage setting practices in the federal government.

We would like to thank the Committee once more for the opportunity to present our views on this important topic. We look forward to working with the Chair and Committee in passing this important legislation.

Ms. **Oakar**. Thank you very much for your fine testimony. And I want you to know how important your testimony is for our record.

I was struck by the point that Cheryl made in her testimony about poverty in old age. We haven't even touched on that. But it is true that if you're paid inadequately when you're younger you're bound to be poor when you're older. We have some laws in the books related to pension and social security that are inequitable also.

It's a real catch-22 situation. We could make an entire hearing out of fringe benefit.

Our interest is not only for women in the work force who are, let's say, young to middle age, but for older women as well. We know that to be old and female today is to be alone and poor. Seventy percent of our older women are poor.

It has, in part, something to do with the manner in which they're treated when they're younger, doesn't it?

So I'm glad that you mentioned that, Cheryl.

I guess nurses are almost the classic example that everyone used. I was an educator by profession. They used teachers. And then they used service employees. You really represent a spectrum of the classic examples of wage discrimination.

How important are nurses? I think we should establish this for the record. I've always had a nurse on my staff, by the way, because of all the health issues that arise. So I know they're very versatile.

But how important are nurses to the health delivery system? What would we do if we didn't have nurses in the health delivery system?

Ms. **Acord**. I think the health delivery system would probably go down the tubes if we didn't have nurses.

In the first place, nurses comprise the largest health related profession in the United States. We have 1.7 million nurses.

You're absolutely right about nurses being a classic example. I was struck this morning by a number of people who either referenced nurses, or there was a nurse testifying for AFSCME, who is also a member of our organization. But it is a classic example. It's something that we've been fighting forever and ever.

Ms. **Oakar**. I don't think there's a person in the room that gets health delivery, or anyone who is older and stays in nursing homes that doesn't depend on that provider.

You know, I used to teach at a community college in Cleveland, and I remember when we had career days some of the male students telling me that they'd love to go into the nursing professions but that they knew that it wasn't going to be paid adequately because it was a so-called female dominated situation.

So we do discourage men who want to go into traditionally female occupations as well, don't we, by the stereotype of that wage gap.

Ms. **Acord**. Absolutely.

Ms. **Oakar**. Cheryl, you represent service employees, and clerical workers. I know in my own case, when I was elected a Member of Congress I didn't realize that in order to put forward my work I really needed to form quality offices, one in the district, and one in Washington. I remember that the hardest position to fill was the secretary. And I've come to realize that the focal point of the office is that secretary. If you don't have a good secretary the office will not operate efficiently.

I was struck by the fact when I looked over the wages how poorly secretaries are paid compared to someone who is a legislative assistant, and so on, and so forth.

It must be difficult to encourage people to stay in clerical positions, isn't it?

Ms. **Wainwright**. Very difficult. It's very difficult, but at the same time women who are dominating in those professions really like it. They see as a way of opportunity for increasing their skills.

Say, for instance, you may have a secretary who works in a hospital, for instance. She may work for four doctors. And those doctors may be classified in different fields, and she has to relate to their medical terminology. But based on because it is a female ghetto-type job her wages are lower. And here she may be working for four professionals whose pay scales range from anywhere between $50,000 to $70,000 a year, and she's making 12 to 13.

I find that—you find that secretary, that clerical is very loyal. She works very hard. She's willing to work through lunch hour. She works overtime. But at the same time is very stressful for her economically to secure her family, and at the same time continue to work through that process, and fear for her job.

Thank you.

Ms. **Oakar**. You have a number of employees of your membership who are female obviously. Do you have a number who are head of the household?

Ms. **Wainwright**. I would say about 75 percent of the women in 9:00 to 5:00 are heads of households.

Ms. **Oakar**. What is the range of the salary that they bring in.

Ms. **Wainwright**. Range anywhere between the salaries of $8,500 all the way up to $13,500.

Ms. **Oakar**. One more question. It may seem facetious, but I think it's important to put it on the record.

Do women work because it's a luxury, or are they just bored? Why do women work?

Ms. **Wainwright**. Well, I personally work because I need shelter, and food, and I need to take care of my child. And at the same time I feel in this society, and in the United States, that everyone wants to secure those necessities of life, so, therefore, you must work. And if you don't have a husband, or a family background to support you, then surely you have to do it yourself one way or the other, whether you're a professional, or service employee.

Ms. **Oakar**. And just one quick point for the Federal employee people.

Yesterday when questioning Dr. Devine, I said, "You know, in the white collar jobs the average male makes $27,800 and some a year, and the average female makes $17,000, and that's after you've been working for a while."

He responded by saying, "Well, one reason for that is that women don't stay in the Federal labor force as long. It was the tenure that was the"—you're laughing, but that's the answer he gave.

Now, you're a career——

Ms. **Burton**. I have 35 years.

Ms. **Oakar**. How do you respond to his remark about tenure? Would you say that's the No. 1 reason for——

Ms. **Burton**. No, women come in and out of the work force, but we find that most women come back into working for the Federal Government because of the pay and the benefits. Even though the pay may be lower in comparison to the males, but in comparison to many areas within the private sector, it is higher.

But we find women do retire and would stay within the Federal Government. Most of them do go out between 55 and 60. And quite a few women we find do have 20, 25, and 30 years of service. I met someone the other day who had 45 years of service.

Ms. **Oakar**. You may want to take a look at the statistic he gave. I wanted to question it, but we didn't have that statistic.

Ms. **Burton**. I plan to when I get back to the office.

Ms. **Oakar**. The last question is, there's no rivalry on this issue between men and women, is there? We have marriages, and we have working spouses. Husbands don't like it too much if their wives are discriminated against, do they?

Ms. **Acord**. I think women and men work for the same reasons, and I can't imagine why a man would not want a woman to make the same salaries. Women work because they have to; because they need a job; because they need the money to support themselves and their families; in order to gain satisfaction from their work, and so forth. I can't believe that it's a question of rivalry at all.

Ms. **Denton**. We represent both men and women, about 50 percent men, about 50 percent women. We have found no difficulty within the union in supporting the issue of pay equity for women. It is a matter that was endorsed wholeheartedly by the entire convention. There is no division on this we've discovered as we pursued the matter.

Ms. **Oakar**. Well, I thank all of you very much for your testimony. We're very happy to have you here, and thanks for your patience.

Our last panel, and the Chair apologizes for the long wait, although we're glad that you didn't wait too long, is Mrs. Phyllis Schlafly, who is the president of Eagle Forum and Mr. Lawrence Z. Lorber, who with the American Society for Personnel Administration.

And the Chair at this time is going to ask unanimous consent to place the testimony of June O'Neill, who is the director of the Program of Policy Research of Women and Families, the Urban Institute, in the record.

[The statement of Ms. O'Neill follows:]

Prepared Statement of June O'Neill

Congresswoman Oakar and members of the committee, my name is June O'Neill. I am an economist and the Director of the Program of Policy Research on Women and Families at The Urban Institute in Washington, D.C. I am appearing today, however, in an individual capacity and the views that I am expressing are my own and are not necessarily the views of The Urban Institute or its sponsors.

I would like to address some concerns about the implications of a policy of "equal pay for jobs of comparable worth." The idea that prices or wages should reflect inherent worth has had appeal over the ages. However, practical considerations have won out over philosophy. Wages are not intended to be value judgments. In a free society they perform the crucial functions of balancing supply and demand. Thus if the demand for eating out in restaurants rises, the wages of chefs rise and more people train to be chefs; and if people stop attending baseball games, the wages of baseball players fall as does the incentive to become a player. Basically the system works, although it is not hard to find examples of market imperfections. For example, wages in certain industries or occupations may reflect unusual market power of a professional association or a union. The way to correct this, however, is to address the market power directly, not to destroy the whole system.

Comparable worth would substitute wage boards for the market on the assumption they would be more fair. But who is to decide what is fair? Should education be the standard? But some leave school early and learn on the job. Should unpleasant work be given special compensation? But who is to say what is unpleasant—is it devising detailed actuarial tables, lifting heavy objects, sitting at a desk all day, working nights and weekends? Without the market to process the scarcity of talents, the tastes of individuals and demands of business and consumers, there is no good way to assign values—i.e. wages—to jobs. Invariably wage boards mulling over studies that are outdated by the time they are completed, and bowing to political pressures from all sides will come up with a wage structure that does not reflect supply and demand. We will then be faced with shortages of workers in some areas and surplusses in others, and the dilemma of how in a free society to induce workers to leave one occupation or area and take up another without wage signals to guide them.

With all this, comparable worth would not remedy the discrimination it is intended to relieve. That case rests on the premise that occupational differences between men and women are the result of discriminatory barriers. While many factors other than discrimination have been shown to determine occupational differences there are certainly instances where discrimination has been a factor as well. The remedy for this discrimination, however, is to remove the barriers, not to change the wage signals that provide the impetus for women (and men) to train or take other steps to enter these occupations.

In sum a policy of comparable worth would be impractical, if not impossible to implement, would distort the functioning of the economy, and would ultimately fail to serve the best interests of women.

ADDITIONAL PREPARED STATEMENT OF JUNE O'NEILL

The women's movement has long fought for equal opportunity for women—opportunities for women to gain access to the schools, training, jobs and promotions they choose to enter, and on the same basis as men. These equal opportunity policies, however, generally accepted the basic premises of a free market system. In fact the thrust was to improve the way the market functioned by removing discriminatory barriers that might restrict the free supply of workers to jobs. By contrast, the policy of "comparable worth" rejects a market system where wages are set by supply and demand and seeks to substitute an administered wage system, where pay in different occupations would be based on evaluations of intrinsic worth made by politically chosen groups. This would be a radical departure from the economic system we now have. Moreover, if implemented, it would lock women into traditional women's occupations, and in the long run would work to their disadvantage.

The idea behind "comparable worth"—that wages should reflect the inherent value of the job rather than the prejudices and greed of the marketplace—is not new. At least as far back as the middle ages the concept of the "just price" has had some appeal. Practical considerations, however, have won out over philosophical musings. Nowadays, most people recognize how inefficient it would be to use an evaluation scheme independent of the market to set prices of consumer goods, or for that matter to set wages in predominantly male occupations. So, for example, we accept a higher price for diamonds than for water, even though water is undoubtedly more important to our survival than diamonds, and a higher wage for lawyers or engineers than for clergymen or bricklayers even though they may be equally worthy and important to our survival. We do so because we recognize that consumer prices and male wages will adjust to reflect supply and demand and that efforts to impede the process will only lead to shortages or gluts.

Why abandon the market

The argument for abandoning market determination of wages and substituting "comparable worth," where wage decisions would be based on an independent assessment of the "value" of occupations, is based on the following premises: (1) The pay gap between women and men is due to discrimination that takes the form of occupational segregation, where women are relegated to low paying jobs; and (2) pay in these female-dominated occupations is low simply because women hold them.

I will comment briefly on these premises.

The pay gap

In 1982, the pay gap, viewed as the ratio of women's to men's hourly pay, was about 70 percent overall. Among younger groups the ratio is higher (and the pay gap smaller)—a ratio of 88 percent for 20-24 year olds, 79 percent for the age 25-34 years old. Among groups age 35 and over the ratio is 65 percent.[1]

What accounts for the pay gap? Clearly not all differentials reflect discrimination. Several minorities (Japanese, Jews and Cubans for example) have higher than average wages, and I do not believe anyone would ascribe these differentials to favoritism towards these groups.

A growing body of research has attempted to account for the gap. After adjusting for the different proxy variables that social scientists use to measure productivity differences, studies have explained varying proportions of the wage gap ranging from almost nothing to almost everything. Among those studies that have used broad national samples, perhaps the central finding has been that about half of the gap is accounted for by a few key variables: schooling, years of work experience, years out of the labor force, and job tenure. The unexplained residual, however, cannot be taken as a measure of discrimination. It is more correctly described as a measure of our ignorance. Work experience and qualitative aspects of schooling are usually measured crudely, and variables that may be important are omitted because of lack of data. Chief among these is the intensity and motivation with which a career is pursued. The intangible qualities that affect training, job search, and job advancement are likely to be related to the extent to which one's energies must be shared between home responsibilities and a career.

Although occupational segregation exists, it is in large part the result of many of the same factors that determine earnings: years of schooling, on-the-job training and other human capital investments, as well as tastes for particular job characteristics. In a recently completed study I found that women's early expectations about their future life's work—that is, whether they planned to be a homemaker or planned to work outside the home—are strongly related to the occupations they ultimately pursue. Many women who initially planned to be a homemaker, in fact became labor force participants, but they were much more likely to pursue stereotyped female occupations than women who had formed their plans to work at younger ages. Early orientation influences early training and schooling decisions, and as a result women may be locked into or out of certain careers. Another factor is that women often maintain a dual career—combining work in the home with an outside job—and this leads to an accommodation in terms of the number of hours that women work and other conditions that influence occupational choice.

Women and men were also found to differ sharply in the environmental characteristics of their occupations. Women are less likely to be in jobs with a high incidence of outdoor work, noisy or hazardous work or jobs requiring heavy lifting. These differences may reflect employer prejudice. I believe it is more plausible that they reflect cultural and possibly physical differences.

Is pay in women's occupations lower because employers systematically downgrade them? The ability of firms to wield such power is questionable. If a firm underpaid workers in women's occupations, in the sense that their wages were held below their real contributions to the firm's receipts, other firms would have a strong incentive to hire workers in these occupations away, bidding up the wages in these occupations. This process could only be thwarted by collusion, an unrealistic prospect considering the hundreds of thousands of firms.

Implications of a comparable worth policy

Any large scale implementation of comparable worth would likely be based on job evaluations that assign points for various factors believed to be common to disparate jobs. A job evaluation, however, is of necessity a highly subjective undertaking. How, after all, do you compare high level quantitative skills with high level verbal skills or nurturing skills with administrative skills? Different job evaluation committees composed of individuals with different values will surely reach quite different conclusions. In fact it is doubtful if any two of us would rank occupations in exactly the same way even if we fully understood what it takes to perform each and every one of them—an impossible undertaking in itself.

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[1] The commonly cited pay gap—where women are said to earn 59 cents out of every dollar earned by men—is based on a comparison of the annual earnings of women and men who work year-round and are primarily full-time. In 1982 this ratio was 62 percent. This figure is lower than the figure of 70 percent cited above because the annual earnings measure is not adjusted for differences in hours worked during the year.

Without the market to process the scarcity of talents, the tastes of individuals and demands of business and consumers, there is no efficient way to assign wages to jobs. Invariably wage boards mulling over studies that are outdated by the time they are completed, and bowing to political pressures from all sides will come up with a wage structure that diverges from underlying conditions of supply and demand. We will then be faced with shortages of workers in some areas and surpluses in others, and the dilemma of how in a free society to induce workers to leave one occupation or area and take up another without wage signals to guide them.

With all this, comparable worth would not remedy the discrimination it is intended to relieve. While many factors other than discrimination have been shown to determine pay differences, there are certainly instances where discrimination has been a factor as well. This discrimination may take the form of barriers to entry into particular firms or types of occupations and training. It can also occur between women and men in the same occupation. The remedy for this discrimination, however, is to remove the barriers, not to change the wage signals that provide the impetus for workers to train or take other steps to enter occupations with strong demand. By mandating a wage for predominantly female occupations that is above what conditions of supply and demand would warrant, one is creating a situation where queues of workers will be lining up for a shrinking pool of jobs.

One final comment pertains to nursing. In much of the discussion of comparable worth the nursing profession is cited as evidence that the market does not work. But facts are never presented. The basic data on employment and earnings of nurses are as follows: Despite a perennial "shortage" of nurses that seems to have existed as far back as one can go, the number of nurses has increased dramatically, both absolutely and as a percentage of the population. In 1960 there were 282 registered nurses per 100,000 population. In 1980 there were 506 nurses per 100,000. This rate of increase is even more rapid than the increase in doctors over the past decade and the supply of doctors has been rapidly increasing. Why did the increase occur? Were women forced into nursing because they were barred from occupations like computer systems analysts? That does not seem to be the case in recent times. What has happened is that nursing along with other medical professions has experienced a large increase in demand since the middle 1960s when Medicare and Medicaid were introduced and private health insurance increased. As a result, the pay of nurses increased more rapidly than in other fields. Between 1960 and 1978 the salary of registered nurses increased by 250 percent while the pay of all men rose by 206 percent and the pay of all women rose by 193 percent. During the 1970s the rate of pay increase for nurses slowed, which is not surprising considering the increase in supply. And entry of women into nursing school has recently slowed suggesting a self-correcting mechanism is at work. Entry of women into medical school has soared, however. Women received only 8 percent of medical degrees in 1970. In 1980 they received 23 percent of medical degrees.

These changes are taking place because of fundamental changes in women's role in the economy and in the family—changes that themselves reflect a response to rising wage rates as well as changing social attitudes. Pay set according to comparable worth would distort wage signals, inducing inappropriate supply responses and unemployment. One cannot wave a wand and change the structure of wages because one wishes it to be that way without incurring adverse effects. If women have been discouraged by society or barred by employers from entering certain occupations, the appropriate response is to remove the barriers, not try to repeal supply and demand.

In sum, a policy of comparable worth would be impractical, if not impossible to implement, would distort the functioning of the economy, and would ultimately fail to serve the best interests of women. Comparable worth is no shortcut to equality.

Ms. OAKAR. Ms. Schlafly, we're very happy to have you here, and as I was telling you privately, I'm very grateful for the book that you gave me some years ago on Cardinal Mindszenty. I read it and still treasure it. It's a very excellent book. And he's one of my heroes. I think he's one of yours.

You may proceed in whatever way is most comfortable. We have your statement. If you'd like to read it, that's fine. Whatever way you feel is most comfortable. Thank you for being here.

STATEMENT OF PHYLLIS SCHLAFLY, PRESIDENT, EAGLE FORUM

Ms. SCHLAFLY. Thank you, Madam Chair.

My name is Phyllis Schlafly, president of Eagle Forum, a national profamily organization. I am a lawyer, writer, and homemaker.

Last October, Eagle Forum organized and sponsored a 2-day conference on comparable worth, the subject of today's hearing.

H.R. 4599 is identified as a bill to promote pay equity. What is pay equity? Equity means justice, but what is justice when it comes to wage setting? Clearly, there must be something mighty fair and just about the American economic system which has provided higher wages, and more of the good things of life to more people, than any nation in the history of the world.

The free market, which allows most economic decisions to be made freely by individuals and unions of individuals, has produced an American standard of living that is the envy of the world. The method of wage setting which has produced the highest wages for the most people is the system that allows wages to be determined by freedom of choice. What is an individual willing to work for, and what is an employer willing to pay? The result is what is called market rates.

Our society has made a few slight modifications to this system. Prior to the current generation, society's notion of pay equity was generally understood to include giving the job preference, the higher pay, and the promotion to the father who is supporting a family. He was perceived to need the wage more than other men or women. Is that what pay equity means in this bill?

Some 20 years ago, the American society codified into Federal law the consensus that equity in wage setting includes the concept that an individual should receive equal pay for equal work as determined by looking at two or more persons doing substantially equal work. There is no apparent dissent from this principle.

Now, however, H.R. 4599 comes along and wants to engage in wage setting by very different factors.

Instead of allowing wages to be set by millions of free decisions, H.R. 4599 wants wages to be set by the subjective opinions of anonymous persons who will decide job worth.

This is an even more intangible will-o'-the-wisp than pay equity, and even less able to produce consensus or equity. How can we agree on what you or I are worth in dollars and cents? Who are the unnamed persons who can fulfill H.R. 4599's assumption that job evaluation techniques can be equitable?

Are they the same job evaluators as those in the State of Washington case who decided that laundry workers are worth the same as truckdrivers, and should be paid equally? The estimated $1 billion judgment levied against the taxpayers of the State of Washington by the judge who decided this case, in *American Federation of State, County, and Municipal Employees* v. *the State of Washington*, was based on a job evaluation that called for wages to be paid according to the following points, allegedly describing job worth:

Laundry worker, 96. Truckdriver, 97. Librarian, 353. Carpenter, 197. Nurse, 573. Chemist, 277. The evaluation concluded that female laundry workers should be paid equally with male truckdrivers, and that female librarians and nurses should be paid about twice as much as male carpenters and chemists.

Do the sponsors of H.R. 4599 really think that the American people will accept as equitable a job evaluation that comes up with such subjective opinions? There isn't a shred of evidence that wage settings by job evaluators will be nearly as equitable as wage setting by the millions of individual decisions operating in the free market today.

Once you divorce wage settings from prevailing market rates, every determination of job worth, being a matter of subjective opinion, will result in a dispute. And most of those disputes will end up in the courts. That's the inevitable scenario of artificial wage setting.

That's why the federal judge who rejected the Denver nurses' complaint that they be paid equally with tree trimmers said that the comparable worth theory is "pregnant with the possibility of disrupting the entire economic system of the United States."

Comparable worth rejects marketplace factors, and instead attempts to fix wages by a point system based on, (1) a subjective evaluation of job worth, plus, (2) a comparing of different kinds of jobs held mostly by women with jobs held mostly by men, and then, (3) uses litigation or legislation to mandate the system regardless of cost.

This is a radical plan to restructure the American economy by a process of using the courts to raise wages for women's jobs significantly above prevailing market rates, and without regard to productivity or costs.

The game plan of those people who want to engage in artificial wage setting is to trick the employer into agreeing to a job evaluation or job evaluation study. The lesson of *AFSCME v. State of Washington* is that any employer who orders a study or a job evaluation is buying a lawsuit.

Judge Tanner made this crystal clear in his decision:

> "The State was on notice of the legal implications of conducting comparable worth studies without implementing a salary structure commensurate with the evaluated worth of jobs.
>
> "It would seem obvious that when the State passed the 1977 legislation requiring submission to the legislature of comparable worth studies that the State knew its employees would be entitled to pay commensurate with their evaluated worth.
>
> "Any other conclusion defies reason. It would then follow that the economic consequences of comparable worth were predictable and foreseeable by the State. The State cannot be heard at this late date to argue they were surprised, confused, or misled as to the legality of its action, and subsequent failure to pay.

The joker in the political game of trying to impose artificial wage setting on the American economy is to inject the bias into the job evaluation at the outset. Hay Associates, for example, is quite willing to bias its job evaluations to suit its paying clients.

The city of San Jose, Calif., known then as the feminist capital of the world because feminists held a majority on the city council, hired Hay Associates to give expert back-up to its highly publicized campaign to launch a national drive for comparable worth.

In a client briefing on August 6, 1981, Hay Associates stated, "Within their situation, it is perfectly reasonable for some organizations like the city of San Jose to attempt to lead the march for civil rights of women in the eighties." This briefing makes clear that, if the feminists want a job evaluation designed to serve feminist goals, the job evaluation experts will comply.

Hay Associates did a small $10,000 evaluation of a few State jobs in Illinois in 1983 for the Illinois Commission on the status of women. Knowing that this group is controlled by the feminists, Hay Associates tailored its evaluation to please its client.

Hay agreed at the outset that its job evaluation would not involve any comparison with marketplace factors. It then set up a point system under which the maximum number of points that could be given for adverse or risky working conditions was 10 percent of the total points.

That explains how the evaluation came up with the conclusion that nurses should be paid equally with electricians. The State of Illinois will now have to defend itself in court against that biased evaluation.

Comparable worth is basically a conspiracy theory of jobs. It asserts that, first, a massive societal male conspiracy has segregated or ghettoized women into particular occupations by excluding them from others, and then, second, devalued the women's jobs by paying them lower wages than other occupations held primarily by men.

Not a shred of evidence has been produced to prove these assumptions. For two decades at least, women have been free to go into any occupation. There are even 3,000 female coal miners today. But most women continue to choose traditional rather than nontraditional jobs.

This is their own free choice. Nobody makes them do it. If the wages for these traditional jobs are raised above the market rates, the result will be that even more women will crowd into those jobs.

On the other hand, the reaction of employers will be to reduce the number of those jobs, and there will be even fewer of the kinds of jobs that women obviously prefer. The pay gap between men and women is not due to discrimination. It is due primarily to the fact that men and women get married.

The average married woman spends only 35 percent of her potential working years in the labor force, and this has a dramatic effect on her earning power. Most married men are motivated to work harder in the labor force to provide for their families.

Most married women are motivated to spend more effort on the daily care and nurturing of their children. That's why most women choose occupations which allow repeated entry and exit from the labor force, part-time work or shorter hours, transfer to another city in order to accompany their husbands, and which have pleasanter and less risky work environments. Comparable worth is an attempt to force employers, taxpayers and consumers to pay women as though they had not made those career choices.

Since the essence of the comparable worth notion is a comparing of jobs held mostly by women with jobs held mostly by men, if women's jobs are allegedly underpaid, then which men's jobs are overpaid?

The occupations alleged to be overpaid are truck drivers, construction and highway workers, electricians, plumbers, mechanics, maintenance and repairmen, policemen and firefighters—incidentally, we have not heard from those groups of men in these hearings.

Comparable worth asserts the notion that it is unfair that blue-collar men are paid more than pink-collar women. The true answer to the pay differential is to have open access to all occupations so that women are not barred from any.

There is nothing equitable about forcing workers who do unpleasant, risky, outdoor work to subsidize those who do clean, safe, indoor work. When H.R. 4599 asserts that the average earnings of full-time female workers are significantly lower than the average earnings of similarly situated male workers, the words "similarly situated" are, to borrow a current Mondaleism—the sleaze factor.

If the male and female workers are indeed similarly situated, we have adequate current remedies under present law enforced by the Equal Employment Opportunity Commission. Most jobs with pay differentials, however, are not similarly situated, and it would be gross pay inequity to force the artificial setting of wages as though they were.

Thank you, Madam Chair.

Ms. OAKAR. Thank you very much, Mrs. Schlafly. I think maybe we'll pause there and ask you questions, and then proceed with our final witness.

First of all, for the record—and I want to thank you for your statement; and, by the way, I want to thank Eagle Forum for endorsing three of my pieces of legislation related to inequitable treatment toward women in the social security system.

You don't agree with the other five pieces that I have, but you do agree with three. I was pleased by that. I really was.

I want you to know that we did invite corporations to come today who represented some of the groups that you mentioned. Some corporations have voluntarily made some very fine headway. Unfortunately, they didn't want to be here today.

Mrs. SCHLAFLY. Madam Chair, may I respond to that?

Ms. OAKAR. Sure.

Mrs. SCHLAFLY. I didn't say anything about corporations. Running through the testimony of the advocates of this bill is a put-down attitude toward the blue-collar man. I think that was clear from several of the pieces of testimony when we're discussing job worth.

I would suggest that, if you had here the truck driver, the electrician, the plumber, the maintenance man, and the policeman, you would get a different perspective on why they believe their jobs are maybe worth, not just a little bit more than the clerical worker, but maybe a whole lot more than the clerical worker.

Ms. OAKAR. We did have the unions that represent a good number of these workers who, we presume, were speaking for all their workers. One thing I want to make clear, in case it's not clear, is that I don't think that they're overpaid.

I don't think firefighters are overpaid. I just think that women-dominated positions that are comparable to the kinds of jobs that you mentioned in terms of their value to American society are not paid adequately. We don't want to lessen any male's salary in any way, shape or form, you know, and I'm glad you brought up the issue.

But in no way does the Chair feel that the positions you mentioned are overpaid. That's not the issue as far as the Chair is concerned, or as far as the legislation is concerned.

You know, Phyllis, I think that a lot of the confrontation that goes on between women is sometimes due to a lack of understanding.

So that's why I'm trying to clarify our position. We want to have dialog on this, and we want to eventually get your support. We just feel that somehow underneath it all, you have some feelings about this issue. Let me also mention that my legislation, the Pay Equity Act of 1984, does not impose a specific wage determination system in any way, shape, or form.

We agree that the laws are on the book, and I can go over what the bill does if you'd like. The bill asks EEOC to report to Congress about their activities. They have a lot of backlogs of cases. We think the Civil Rights Act is on the books.

The Equal Pay Act is on the books. The bill creates a report system and a mechanism of research and assistance to employers that need some technical assistance on the overriding issue of pay equity. In no way do we set a specific wage determination system. I'd be happy to give you a copy of the legislation.

Mrs. SCHLAFLY. May I respond, Madam Chair?

Ms. OAKAR. Sure.

Mrs. SCHLAFLY. H.R. 4599, on page 5, refers to job evaluation technique as an objective method of determining the comparative value of different jobs. I think we have two problems here, whether it is objective, in other words, whether you and I can—or anybody can—decide the intrinsic worth of a job, and then you have the comparing, which is the essence of comparable worth.

I do not think I exaggerate when I say that running through the testimony of the advocates of the comparable worth theory is almost a feeling of envy that the blue-collar man is making more than the white-collar woman. Where a business has to sell its product at a certain figure to meet competition, or where a government has to meet a certain budget, you may be dealing with a fixed budget.

So, in some instances, it's going to be inevitable that it's a redistribution of wages from the blue-collar to the white-collar groups. I think this does set up a rivalry. I'm not saying who I think is worth more; I think that is impossible for us to agree on. This is why I believe that the free decisions of the marketplace provide the greatest equity.

Ms. OAKAR. Well, let me assure you once more that in no way does the Chair want to lessen any man's salary. That's not the issue at all. The issue really relates to those individuals who are not valued as highly because of the kinds of work that they do.

I wanted to just ask you some questions from your testimony. You talk about the market rates; and you talk very patriotically about the fact that our country has provided higher wages and more of the good things in life to more people than any other nation.

I think to a large degree that's true. I also think it's unthinkable that in Sweden, one of the wealthiest groups of people in the country are women over 65. In our country the poorest people in the country are women over 65, because their pensions are dependent on the wages they earned when they're younger.

It's a catch-22 for our elderly women, because if you're not paid adequately when you're young, you're bound to be poor later. Isn't it unthinkable that we would be such a wealthy country and still have the greatest percentage of our older women below the poverty level?

I think it's important that we illustrate that the market rates and what employers are willing to pay are not always fair. It'd be nice to think that this was Utopia, but the reality is that it's not always fair out there in terms of what wages are paid to certain groups.

We know, Mrs. Schlafly, that if jobs are dominated by women, they're bound to pay 20 and 30 and 40 and 50 percent less than jobs that are paid to men. You ask, for example, how can we agree on what you or I are worth, who are the unnamed persons who can fulfill my legislation's assumption?

I want you to know that I have been criticized by some of the unions here today because I'm not asking for a private study. I want the Reagan administration, whom I believe you support, to do the study. Do you trust them to do the study?

Mrs. **Schlafly**. Certainly not, if it's divorced from prevailing market rates. I don't think anybody is smart enough to decide what is fair. Is it fair, for example, that lawyers make a lot more than ministers? Is it fair that football players and tennis players make more than soccer players and volleyball players?

You are not paid what you are worth. You are paid what somebody's willing to pay you, and it's my belief that the free system of millions of people making the individual decisions is better than any group of people who label themselves experts and try to decide these things.

Ms. **Oakar**. So you don't feel that having this administration do the study is going to be objective.

Mrs. **Schlafly**. The biases are put in these studies when they are divorced from the marketplace. Our experience with this issue, particularly at the State level, is that what the advocates of comparable worth, such as AFSCME and others, are demanding is that they start at the outset by saying, "We are not going to look at prevailing market rates. We are only going to look in our crystal ball and decide what we think this is worth."

And I think that is impossible, because we don't have a system whereby you're paid what you're worth; we have a system that you're paid what people are willing to pay, and what others are willing to work for; and I think the free system has enormous advantages over any controlled system. And I would hope that you would not be advocating the type of controlled economy that they have in Sweden.

Ms. **Oakar**. I agree with your statement about wealth in this country. I don't know that it's distributed as equitably as we'd like to think it was.

Mrs. SCHLAFLY. Well, but look, I agree with that. The question is, do you——

Ms. OAKAR. Do you agree with that?

Mrs. SCHLAFLY. Nothing's ever perfect. Let's say——

Ms. OAKAR. Yes, but how do we reconcile the problem?

Mrs. SCHLAFLY. We don't give more power to the Government. In 1983——

Ms. OAKAR. We have a law on the books—you agree that we have the Civil Rights Act.

Mrs. SCHLAFLY. I agree with the Civil Rights Act, but in——

Ms. OAKAR. Title VII, do you agree with that?

Mrs. SCHLAFLY. I agree with title VII, but in 1983, as a result——

Mrs. OAKAR. What does it say? What does title VII say?

Mrs. SCHLAFLY. Well, as I pointed out during my testimony, we have basically a free economy, but we have put some modifications on it. One of them is equal pay for equal work—a modification. I support that. Everybody supports that.

But in 1983, under the Reagan administration's tax reduction program, the private sector created 4 million new jobs. This is the greatest thing that can be done for women, for men, and for the economy. But to bring in a controlled system, that allows some people in some room somewhere to claim they are experts, and then redistribute income and wages according to what they think is equitable, is going to do nothing but reduce the creation of new jobs.

I would also point out that I'm not trying to impose my view of job worth on anybody else. I just pointed out that you have, in this hearing, heard only from the point of view of those categories of jobs of people who are complaining that they're not being paid enough.

But I think you would get another perspective if you heard from the men who are the truck drivers, the mechanics, the electricians, the plumbers, and all those people who do those blue-collar jobs which your other witnesses think should be paid as much as.

Ms. OAKAR. But again, you have to understand that the issue is not that we want to take a nickel away from a firefighter, or an electrician.

Mrs. SCHLAFLY. But that's what'll happen.

Ms. OAKAR. How do you know that it will happen? You mean by enforcing the law that you support, wages will decrease in some occupations?

Why is it necessary? I wish we didn't have to go to court on these issues. As I pointed that out during my questioning of AFSCME, there are a lot of women who don't belong to the labor movement. They don't have anyone to protect them in terms of enforcement.

A woman shouldn't have to go to court to get a fair pension when she's paid the same amount into the system for the same number of years as a man, her male counterpart, in the same position.

So we don't want people to go to court on these issues if it can be avoided. We want the EEOC to protect the law that's already in the books that you support.

Mrs. SCHLAFLY. Yes, I do support——

Ms. OAKAR. My legislation attempts to make them advocates for the law. I'm not asking for any exact standard or specific wage determination system. I think if you look real close at the legislation, you'll see that there's nothing that says we want firefighters to make less.

I'm an advocate for firefighters, as a matter of fact, and others that you mentioned in your testimony. We do not want to take a cent away from the American worker, whether he is a firefighter, an electrician, or any other type of worker.

Mrs. SCHLAFLY. Well, even though you don't want to take anything away from the blue-collar man, you're asking for a raise in wages which has nothing to do with productivity, and which, if it's a governmental entity, would require a raise in taxes, or, if it's a private company, may force that firm to lose out in the competitive market.

I support the enforcement of the law, and I believe the present law is being enforced, but the law does not require comparable worth. The law requires equal pay for substantially equal work, as decided by looking at two people doing substantially equal work.

The law does not require us to look at whole categories of clerks and compare them with whole categories of plumbers or electricians.

Ms. OAKAR. Well, we're talking about the value of an individual's work and how important it is. Do you think by your last statement that women are less productive in the work force than men?

Mrs. SCHLAFLY. I think you have to answer that question in terms of individuals, and not as groups. It is completely proven beyond a shadow of a doubt that the average married woman spends only 35 percent of her potential earning years in the labor force.

I am among those who resent very much when some people, not you, but some people, including some of those here today, refer to the married woman as though she is the nonworking woman. She is a working woman, but she is not in the labor force.

But if she is only putting 35 percent of her potential working years in the labor force, she obviously is not going to draw the same pay as a man or woman who has spent all his or her life in the labor force.

Ms. OAKAR. Well, let me ask you, are all women homemakers?

Mrs. SCHLAFLY. All women——

Ms. OAKAR. You and I might wish they were——

Mrs. SCHLAFLY. All women aren't anything, except not men.

Ms. OAKAR. OK. Well, that's true. OK. Vive la difference.

What percentage of women are the sole head of the household?

Mrs. SCHLAFLY. I don't know what the percent is. It's certainly growing, no question about that. But are we getting back to the medieval theory of a just wage, that we should pay somebody what is enough to support the family?

I thought the modern consensus was that we should pay based on the work, and not on the person's situation. This notion of a just wage is a kind of medieval theory that it's the obligation of the employer to pay a family head enough to support the family.

That is not the modern theology, so to speak. We have come in our country to a consensus of paying for the work that is done, regardless of who does it. I believe that is the premise which the people of this country support, and which I support and which the Reagan administration supports, and which I think is the most valid in the present day and age.

Yet, when we discuss this term of pay equity, I watch these advocates on television, and they often get back to saying "Well, my husband has left me and he's not sending support payments, and I have two children to support, therefore I need comparable worth."

That is a very different argument. That's the argument of the so-called just wage theory of centuries ago which I do not think is the consensus or should be the consensus today.

Ms. **OAKAR**. Well, if a woman is doing a job that is exactly the same as a male counterpart. Do you think she should be paid the same amount of money as is the male?

Mrs. **SCHLAFLY**. Absolutely. And she is, and if there are violations of the law, workers can make their claim. It won't cost them any money, and the EEOC today has almost no backlog of cases, because that law is so generally observed.

Ms. **OAKAR**. That's not true about EEOC today in terms of their backlog of cases——

Mrs. **SCHLAFLY**. Well, it's nothing compared to what it was years ago.

Ms. **OAKAR**. I think you should take a look at that.

Mrs. **SCHLAFLY**. Several years ago the backlog was 4 or 5 months.

Ms. **OAKAR**. You should take a look at that, because when the 180 days runs out, women are being forced to go to court or else drop their interest in the case that they put forward before EEOC. The reason they don't pursue the case is that EEOC has not been reviewing those cases.

Most Americans can't afford the kinds of fees that attorneys charge.

Mrs. **SCHLAFLY**. But most of those cases that I think you were referring to are attempts of certain groups to establish the comparable worth notion by bureaucratic regulation or by litigation, even though it is not in the statutes. I do not believe that a bureau should be rewriting the statute. That is what a lot of those claims that you refer to really are.

Ms. **OAKAR**. We're not asking the Bureau to rewrite the statute. The Chair believes—that the law is on the books, that there are two laws that relate to the issue of pay equity.

What we're asking for is some advocacy and some kind of evidence that EEOC is doing its job. We're asking for a study by the Office of Personnel Management of the Federal work force as well. The Chair could have been partisan about it and asked for another study by Democrats or somebody like that, but decided on an internal study.

We're asking this administration to do the job. We think they're charged to do a job.

Mrs. **SCHLAFLY**. But they're not charged to establish comparable worth. The Supreme Court has made it very clear that comparable worth is not the law, and I do not believe that EEOC should make that law.

Ms. **OAKAR**. Well, the Federal Court in Washington said the opposite. They said that comparable worth was a factor, and that's why they ruled in favor of AFSCME's claim. You may not like AFSCME's suit, they won.

That's an issue that all women and all men in this country ought to be behind.

I am concerned about the quality of life of each and every person, and the issue of fairness and justice in this country——

Mrs. SCHLAFLY. The State of Washington suit—of course you're right—did decide for comparable worth. Fortunately, that so far only applies to Washington, and it is on appeal. But that case was based on a job evaluation system in which the so-called experts said that it was unfair that laundry workers were paid 40 percent less than truck drivers; and part of this billion-dollar judgment is to raise the pay of laundry workers equal to truckdrivers' pay.

Now, I submit that that is a subjective judgment, and that there is no evidence that this type of subjective evaluation of job worth is going to produce general equity any more than the free market system.

Ms. OAKAR. Mr. Bosco.

Mr. BOSCO. Thank you, Madam Chairman.

Certainly, a lot of what you say Mrs. Schlafly, I can identify with. I had lunch late last week with a young man from my district who has been judged to be one of the three best high school basketball players in the country. And we were laughing that I am positive that upon graduation from college that he will make more in his first 5 years than I will probably make as a Member of Congress and as a lawyer for the rest of my life.

Mrs. SCHLAFLY. Now is that fair?

Mr. BOSCO. So there is something in all of us that can identify with the difficulty of establishing which jobs are comparable and which people are worth what in the workplace.

But I do have a few questions. One is that you identify yourself as president of Eagle Forum, a national profamily organization.

Can you describe to me how your position on this is a profamily one? I can see how your testimony relates to the free market, and the free enterprise system, and everything else, but how does it relate to being profamily?

Mrs. SCHLAFLY. We believe that some of the most formidable attacks on the family today are the economic attacks. We have addressed ourselves to many of these economic attacks on the family, such as the tremendous decline in the value of the child's income tax exemption, which has taken place over the last 30 years. If a child were to have the same value in the income Tax Code today as a child had when my first child was born, the child exemption would be $4,000 per year.

We criticize the tremendous attack on the traditional family that exists in discrimination in individual retirement accounts.

Mr. BOSCO. Some of those issues are easier to understand.

Mrs. SCHLAFLY. We think that the comparable worth notion is unfair to the traditional family. The target group of the comparable worth advocates, and I have listened to their rhetoric all over the country, is the blue-collar man who is trying to support his family.

Running through the rhetoric of all of these people whom I have debated for 10 years is a feeling of envy that the man who does not have a college education could possibly be paid as much as a woman who has a business school or a nursing school certificate.

So we look upon one of the elements of comparable worth as a direct attack on the ability of the blue-collar man to support his family and to maintain the traditional family lifestyle.

Mr. Bosco. You believe that the result of any action that we might take in bringing women up in the workplace will inevitably result in bringing men down, and that will be the attack on the family?

Mrs. SCHLAFLY. Yes, and not only men, but women. If you raise the wages of clerical workers, the inescapable result is that every employer is going to reduce the number of clerical workers. So, maybe you will have some women who will get a dollar an hour more, but you will have other women who will lose their jobs altogether.

Mr. Bosco. But we have had testimony which I assume is true, that more and more women are going into the work force including more and more married women. I think that we had testimony that over half of the married women, not the single parents, or the divorced women, or women who choose to be single, but more than half of the married women in this country are back at work.

Why do you think that they are doing that, is this some frivolous activity on their part to buy luxuries, or are they going back to work out of necessity?

Mrs. SCHLAFLY. Well, I think that women work for the same reason that men work. They need the money. But I looked at the Census Bureau figures which were released this week, and the majority, that is more than 50 percent, of the married women who are in the work force today are doing only part-time work.

I think there is significant evidence that the majority of those were induced into the labor force by the financial incentives we have built into the income tax law which tell her that, if she goes into the labor force, approximately the first $3,000 she makes can be tax free.

Mr. Bosco. So this is motivation behind women getting into the work force to take advantage of the Internal Revenue Code?

Mrs. SCHLAFLY. I do not think that you can discount financial incentives. The IRA's, the individual retirement accounts, are highly discriminatory. They tell wives that, if you will just move into the work force, the first $2,000 you make can be tax free.

Mr. Bosco. I do not want to be overly argumentative. But let's assume that most of the women who are going back into the work force, the married women, are doing it out of necessity. Apparently, that would mean that the benefits of our society that you spoke of are costing more, whereas years ago in a family, the man could earn enough to provide that standard of living. Now it is taking two people to provide it.

Would there not be an advantage to the blue-collar worker if his wife has to go out and work to support the family standard of living, that she is paid an equitable wage vis-a-vis what men in the same situation are paid?

Mrs. SCHLAFLY. I believe in paying an equitable wage. The question is who decides.

Mr. Bosco. But in terms of this profamily that you are supportive of, I can conceive of a situation where the blue-collar family would be advantaged by a woman making more in a clerical position where historically she has not been able to.

Mrs. **Schlafly**. The assumption in your argument is that certain categories of work are not paid equitably. I think that that is a subjective perspective, and that you have not heard from the other point of view.

I agree that people should be paid equitably. The question is who decides.

Mr. Bosco. I think that what we are talking about is not so much the case of the basketball player that I mentioned earlier, but large numbers of people working in traditional jobs where it can be shown not through a conspiracy as you mentioned but just through history, that it is very hard for people to get out of that kind of discrimination.

And I think that if anything we will probably want to address those major areas where historically women are underpaid for hard work that is comparable to other hard work. And it can probably be shown that this hurts families as much or more as some of the things that you have felt does.

Mrs. **Schlafly**. Well, what we have been discussing here is comparing the clerical worker with the blue-collar maintenance man.

Mr. Bosco. And the nurse with the prison warden.

Mrs. **Schlafly**. They are running ads in the Chicago papers right now offering jobs for nurses at an hourly wage that figures out to $30,000 a year.

How much do you think a nurse is worth?

Mr. Bosco. Well, the nurses that I have experienced in the minor illnesses that I have had are worth at least that or maybe more.

Ms. **Oakar**. It would be nice to think that the average nurse made $30,000 a year. But I think that the typical nurse makes about $13,000. The median income for nurses is about $13,000 a year.

Mrs. **Schlafly**. I have a daughter-in-law who is a nurse; she can call in on Monday and say, I choose to work only Monday and Wednesday this week.

Ms. **Oakar**. Well, she is lucky. I do not know many nurses who can. I do not think that my staff person can call in and do that.

I have read the article about your family in Good Housekeeping. And I thought that it was very interesting. Very honestly, and I am being very sincere about this, I thought that it added a very different dimension to you. I was struck by the fact that you ran for Congress twice several times when your children were younger.

And some of the women here have younger children. So you have a lot in common with some of the people around here.

Mrs. **Schlafly**. I believe in free career choice. I think that women can do whatever they want. When you discuss a subject like this, look, for example, at the women who have gone into the real estate business where women have always been paid exactly the same as men. Whoever sells the house, you get the same commission.

And women have virtually taken over that field. They are now over 50 percent. Nobody kept them out. This notion that women are deliberately ghettoized, I think, cannot stand up.

Ms. **OAKAR**. But you are stating on page 5 clearly, in that last paragraph there that somehow our motivation relates to trying to break up American marriages. It would be nice to think that all women got married, and all spouses were fairly well off.

But women by and large work today because they need the money as much as any man needs the money.

Mrs. **SCHLAFLY**. I said that a few minutes ago.

Ms. **OAKAR**. And we are not out to disrupt the American family. I believe very strongly that the basic unit of society is the American family.

Mrs. **SCHLAFLY**. Madame Chairman, there was no implication in my testimony that you were trying to disrupt the American family, or that I think that our society is structured the way it ought to be. I have just made my observation of the way that society is.

Maybe in 50 years, women will be in the work force all their lives like men. I do not think so, but it is possible. But in the world in which we live today, most women have not spent all their lives in the labor force like men, and therefore, they do not achieve the levels of earnings that men achieve. In addition, women value other elements of the wage-benefit package besides pay itself.

Ms. **OAKAR**. Mrs. Schlafly, you mention here "that is why most women choose occupations which allow repeated entry and exit." You imply that women choose these occupations because of marriage. A good portion of the women in this country are not married.

Mrs. **SCHLAFLY**. But there is no pay gap between unmarried men and unmarried women. The pay gap is only between the married men and the married women.

Ms. **OAKAR**. That is absolutely not true. We will give you the statistics on that, and we can share each other's statistics.

You also mentioned that their choices have to do with the less risky work environment.

I think that women choose so-called traditional jobs like nurses, social work, teachers—and not that they should not choose other jobs like being engineers, and lawyers, you are right, there are more options open today than ever before—because it is an extension of their femininity.

I think women choose those jobs, because they care about people. To care is a feminine quality. I do not think it is fair that nurses are discriminated when paid, particularly when their work is so important to our society. They spend more time with all patients—the elderly, sick, children—during hospital care.

I truly believe it is a crime that important occupations—like secretarial work, teaching, and nursing—are undercompensated just because our Government standards are not being met.

Mrs. **SCHLAFLY**. If you took away the garbage collectors, our society would collapse.

Ms. **OAKAR**. I agree.

Mrs. **SCHLAFLY**. And they are all men.

Ms. **OAKAR**. But they are paid a much higher salary than the typical occupation that I just mentioned.

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Mrs. **Schlafly**. There you go again attacking the blue-collar man.

Ms. **Oakar**. I am not attacking that person. What I am saying is that that individual who collects the garbage, or that individual who is the electrician, or the fire person, or whoever, male or female, should not make any less.

And Phyllis, please do not try to confuse the issue. Because we are not saying that. We are saying that women who are in occupations that should be valued higher should be paid more adequately. That is the point. Not that we want to take one thing away from men.

As a matter of fact, the president of AFGE, in his testimony, cited individual cases of men who were discriminated against, because they were in traditional kinds of jobs like secretarial positions. They were making less money as they should as well.

I agree with that. We are not trying to take away any male's salary. And frankly, I am not going to let you get away with it.

Mrs. **Schlafly**. Well, we would like everybody's salary to be higher.

Ms. **Oakar**. You and I know that that is not the point. But really and truly we appreciate your coming here. I think if you examine this more closely, you will take a better look at where the poverty is in this country. The fact that a third of the women who are head of the household are below the poverty level, who have children to take care of is a statement in itself.

Mrs. **Schlafly**. Do you think that they should be paid more because they are heads of households?

Ms. **Oakar**. No, but I think that they should be paid more in the various jobs they hold, if those occupations are underpaid. You know, the only reason that the market does not pay more is that we do not demand that they pay more.

And let me tell you something. If we had the nurses, and the teachers, and the secretaries say, listen, we are just not going to perform for those wages, our country would really have some problems.

And I am saying to you that we are all people who care. We are Americans who care about our people. We both believe in the Civil Rights Act. All I am saying is let's enforce it. That is all.

Mrs. **Schlafly**. Let's enforce it as it is written.

Ms. **Oakar**. Exactly. I could not agree with you more.

Mrs. **Schlafly**. Not as some people would like to write some new jargon into it.

Ms. **Oakar**. I absolutely agree with you. Let's enforce it as it is written.

Thank you very much for your testimony.

Mrs. **Schlafly**. Thank you, Madame Chair.

Ms. **Oakar**. We agree on some things anyway. It is good to have you here, really.

[The following written comments were received for the record subsequent to the hearing.]

PHYLLIS SCHLAFLY
TESTIMONY ON COMPARABLE WORTH

One of President Jimmy Carter's appointees to the Federal bench, U.S. District Judge Jack E. Tanner, handed down a 42-page decision on December 14, 1978 at Tacoma, Washington, which attempts to legitimatize a radical new concept of judicial activism that has massive implications for all governmental bodies and private employers. [1] As he announced in his opinion, "This is a case of first impression insofar as it concerns the implementation of a Comparable Worth compensation system."[2]

Washington's Assistant Attorney General, Clark Davis, told the press that the court's ruling would "jeopardize the pay scheme of every employer in the country."[3] That's not hyperbole. When another Federal judge rejected a Comparable Worth complaint against the City of Denver in 1978, he accurately said that the Comparable Worth theory is "pregnant with the possiblility of disrupting the entire ecomonic system of the United States."[4]

The financial burden of Tanner's decision, unless reversed on appeal, is estimated to cost the Washington State taxpayers about $1 billion on wage increases, fringe benefits, backpay, and injunctive relief to the plaintiffs. The potential litigating load on the courts boggles one's imagination. When attorney Winn Newman won the Tanner ruling on behalf of the American Federation of State, County, and Municipal Employees against the State of Washington, AFSCME issued a news release predicting that "the ruling means similar actions can be expected in other state and local governments."[5] Indeed, class-action suits are already pending in Pennsylvania, New York, Illinois, Wisconsin, Connecticut, Los Angeles, and Hawaii.

What Is Comparable Worth?

"Equal Pay for Comparable Worth" is a system of wage-setting which rejects marketplace factors and instead fixes wages by a point system based on (1) a subjective evaluation of job WORTH plus (2) a COMPARING of different kinds of jobs held mostly by women with jobs held mostly by men,[6] and then (3) uses litigation or legislation to mandate the system regardless of cost.

The Tanner ruling is the initial victory in a radical plan to restructure the American economy by a process of using the courts to raise wages for women's jobs significantly above prevailing market rates and without regard to productiveiy or costs. What makes this concept appealing to some people is that it is falsely packaged as "women's rights" when, in fact, the real issue is whether we will allow the courts to disrupt private enterprise as they have already disrupted the public schools.

"Disrupt" is not too strong a word. Judge Tanner conceded that his order might severely dent the recession-ridden Washington State treasury, but insisted that the remedy "has to be disruptive because you're changing past practice."[7]

Nothing less than a complete court-takeover of the private sector is the goal of the Comparable Worth advocates. Winn Newman testified before a House subcommittee on September 16, 1982 that, "There can be little doubt that pervasive sex-based wage discrimination exists throughout the public sector."[8] Speaking to a friendly subcommittee, he laid out his game plan:[9]

> It appears that only a strong litigative strategy will goad employers to end the blatant sex-based discrimination which exists in almost every workplace that has traditionally employed women workers. In a word, it is time to move Comparable Worth from the conference room to the courtroom.
>
> Labor Unions, women's rights groups and individual female workers must step up the pace of filing discrimination charges and litigating these cases. A number of dramatic court victories will do more to inspire "voluntary" compliance, effective collective hearings, reports and studies. The teaching of the enforcement of civil rights laws is that a lawsuit or the threat of a lawsuit is often the best way to educate.

No Evidence of Discrimination

One would think that, in a dramatic $1 billion judgment against an employer, the 42-page opinion might contain some evidence of what Tanner asserted was "historical ... direct, overt and institutionalized discrimination" against women.[10] But the proof of any wrongdoing by Washinton State against its female employees is less than persuasive. The decision contains no evidence that any woman was paid less than a man for equal work, for substantially equal work, or for comparable work. The decision contains no evidence that any woman was excluded or even discouraged from taking a "man's job" or being promoted to one. The decision contains no evidence that women were induced to take "women's jobs" or were paid less because they were women. As would be expected, the decision leans heavily on current civil rights law that "it is not necessary to establish discriminatory intent."[11]

The Tanner decision rested its case for sex discrimination on: (1) a showing that the State did not pay women the salaries indicated by the job evaluation which the State hired to be made by the private consulting firm of Norman Willis & Associates; (2) a showing that prior to 1973 the State ran some "help wanted ads in the 'male' and female' columns of newspapers"; (3) some self-serving generalities in politicians' news releases; and (4) the passage of two Comparable Worth implementation bills by the State Legislature in 1983,[12] which were ridiculed as a "token appropriation of $1.5 million" and construed as an admission against interest.[13]

The $1 billion decision essentially depends on the Willis job evaluation. Tanner ruled that the State discriminated and acted in "bad faith" because it did not pay equal wages for women's jobs to which the Willis evaluation had assigned a number of points "comparable" to other jobs held by men involving entirely differt kinds of work. Tanner refused to entertain any arguments about costs, saying, "It is time, right now for a remedy. Defendant's preoccupation with its budget constraints pales when compared with the invidiousness of the impact ongoing discrimination has upon the Plaintiffs herein."[14]

The Fraudulent Premise of Job Evaluation

The Tanner decision itself is based on invidious comparisions. Their entire concept of Comparable Worth is a house of cards built on the false premise that persons who call themselves "experts" can -- after completely closing their eyes to all marketplace factors -- evaluate a wide variety of jobs (professional, white-collar and blue-collar) and give each one a "point" value which (1) is objectively accuarate, and (2) is just and equitable in comparision with every other type of job with the same employer. The key element in the Comparable Worth methodology (and specificially in the Tanner decision) is getting the judge to accept the assumption that someone can and should set equitable wages totally divorced form prevailing market rates.

The Tanner decision states that the Willis job evaluation assessed each job class "using the following four evaluation components: (1) Knowledge and Skills (Job Knowledge, Interpersonal Communication Skills, Coordinating Skills); (2) Mental Demands (Independent Judgment, Decision-Making, Problem-Solving Requirements); (3) Accountability (Freedom to Take Action, Nature of the Job's Impact, Size of the Job's Impact); (4) Working Conditions (Physical Efforts, Hazards, Discomfort, Environmental Conditions). The total of the value of these four components constituted the final point value of the class."[15]

It is unlikely that any two persons, even "experts," could agree on a relative point distribution amoung that list of intangible for even one job, let alone the 15,500 jobs involved in the plaintiffs' class-action suit.

The type of job evaluation used in the Tanner Decision - and generally demanded by the Comparaable Worth advocates - is fundamentally different from job evaluations used by employers today. First, the Comparable Worth job evaluation is a process of subjective opinion masquerading as objective fact. Second, the Comparable Worth job evaluation deliberately excludes marketplace factors such as prevailing wage rates.
Third, the Comparable Worth job evaluation compares professional, white-collar and blue-collar jobs in the same point scheme. Fourth, the professional and white-collar "evaluators" (who have little real understanding of blue-collar work) systematically and consistently undervalue risky and unpleasant working conditions.

This process produced such bizarre results as the following: laundry worker 96, truck driver 97, librarian 353, carpenter 197, nurse 573, chemist 277. The evaluation concluded that (female) laundry workers should be paid equally with (male) truck drivers; and that (female) librarians and nurses should be paid about twice as much as (male) carpenters and chemists.[16] It's no wonder that Washington State saw fit not to implement the Willis evaluations.

Lessons of the Tanner Decision

The strategy of the Comparable Worth advocates is clear: Seek the forum of a Carter-appointed judge in order to try class action cases against State and local governments or the Federal Government. The judges will be friendly, the government officials won't have to worry about keeping costs down in order to compete in the free market, and the politicians can be intimidated by the false assertion that this is a "women's rights" issue.

Then, having judicially establised the premise that Comparable Worth is a equitable system; they will start litigating, legislating, and striking to force the private sector to comply. At its 1981 Convention, the AFL-CIO delegates unanimously pledged "to adopt the concept of 'equal pay for comparable work' in contract negotiations [and to] take all other appropriate action to bring about true equality in pay for work of comparable value."[17]

The Tanner decision makes clear that Washington State put its head in the noose when it commissioned the Willis job evaluation. Under Tanner's reasoning, "discrimination" became self-evident when the State declined to implement the Willis evaulations. Tanner's decision ruthlessly stated:[18]

> The State was on notice of the legal implications of conducting Comparable Worth studies without implementing a salary structure commensurate with the evaluated worth of jobs. It would seem obvious that when the State passed the 1977 legislation requiring submission to the legislature of Comparable Worth sudies that the State knew its employees would be entitled to pay commensurate with their evaluated worth. Any other conclusion defies reason. It would then follow that the economic consequences of Comparable Worth were predictable and foreseeable by the State. The State cannot be heard at this late date to argue they were surprised, confused or misled as to the legality of its actions and subsequent failure to pay.

All other employers, public and private, should ponder those words carfully before they commission a "job evaluation" or acquiesce in the radical notion of Comparable Worth.

[1] American Ferderation of State, and Municipal Employees v. State of Washington, No C82-465T, slip opinion filed December 14, 1983, reported at 33 FEP Cases 808 (W.D. Washington 1983); Cited hereafter as AFSCME.

[2] AFSCME, slip opinion at 29.

[3] Reported in the Chicago Tribune, Dec. 13, 1983.

[4] Lemons v. City and County of Denver, 17 FEP Cases 906 (D. Colo, 1978), aff'd, 620 F2d 228 (10th Cir. 1980), cert. denied. 449 U.S. 888 (1980).

[5] AFSCME news release, Sept. 16, 1983.

[6] Women's jobs were defined in the Tanner decision as "all job classifications ... which were 70% or more female." AFSCME, op. at 17.

[7] Newsweek, Dec. 12, 1983, p. 48.

[8] Pay Equity -- Equal Pay for Equal Work: Joint Hearings Before the Subcommittees on Human Resources, Civil Service, and Compensation and Employee Benefits, 97th Cong., 2nd Sess. 157 (1982).

[9] Ibid., p. 164.

[10] AFSCME, slip opinion at 27.

[11] AFSCME, slip opinion at 12; citing Griggs v. Duke Power Co., 401 U.S. 424 at 432, (1970).

[12] Wash. Laws 1983, 1st Ex. Sess., Ch.75 and Ch.76 §135.

[13] AFSCME, slip op. at 31 and 34; see also footnote 19: "What other logical reason [than sex discrimination] can there be for the Defendants [sic] adoption [by the passage of the 1983 statutes] of the 'comparable worth' theory of compensation."

[14] AFSCME, slip op. at 34.

[15] AFSCME, slip op. at 40.

[16] AFSCME Memo in Support of Comparable Worth Charge Against Washington State, published by the Bureau of National Affairs, The Comparable Worth Issue, 1981, pp. 30-32.

[17] U.S. House Hearings, op. cit., p. 164.

[18] AFSCME, slip op. at 36-37.

Ms. **Oakar**. Our next witness will proceed. We are sorry that we saved you for last. But sometimes we save the most challenging witnesses for last. We are glad to have you here, Mr. Lorber. Please proceed in whatever way is most comfortable.

STATEMENT OF LAWRENCE Z. LORBER, AMERICAN SOCIETY FOR PERSONNEL MANAGEMENT

Mr. **Lorber**. Madame Chair and members of the committee, my name is Lawrence Lorber. I am currently a lawyer in Washington specializing in labor and equal employment law. Prior to joining my law firm, I held various positions in government including that of Director of the Office of Federal Contract Compliance Programs in the administration of President Ford.

I am before you today to deliver testimony on behalf of the American Society for Personnel Administration. ASPA is the world's largest personnel association consisting of 34,000 personnel professionals in the United States and abroad.

As the largest association of personnel professions, ASPA has taken seriously its responsibility to conduct and sponsor research into human resource issues, and increase the capacity of the profession to serve society by insuring that the economic system is fair and productive. To that end, ASPA has devoted extensive effort toward studying compensation issues. In 1981, ASPA in conjunction with the American Compensation Association published a major study entitled "Elements of Sound Base Pay Administration" which described the fundamental elements of structured compensation systems.

Thus, I am testifying on behalf of an organization uniquely qualified to participate in the growing debate over fair compensation, and one whose collective expertise can help remove the mist of confusion and rhetoric which has so far obscured the real issues.

It is with this background that I offer ASPA's views on the issue of comparable worth as a concept and as embodied in the legislation before this committee. As a matter of law and as a matter of sound public policy in a free economy, the concept of judicially or bureaucratically mandating comparable worth is unacceptable.

It has no basis in statute, no support in the reported cases, and represents a startling reversal of 20 years of direction in the enforcement of our equal employment opportunity laws.

The history of congressional activity in the area of compensation discrimination and comparable worth is clearly beyond reasonable question. Only a year before the passage of title VII, Congress took a hard look at the morass in which this theory would lead, and decisively rejected the idea that the courts should be thrust into it.

The original bills that eventually became the Equal Pay Act of 1963, 29 U.S.C. § 206(d)(1), adopted a "comparable worth" approach. Thus, Congressman Zelenko, sponsor of H.R. 11677 in the 87th Congress, one of the key parent bills of the Equal Pay Act, described it (referring to a letter from the Secretary of Labor discussing the distinction between "equal" and "comparable") as requiring that "'work of comparable character' on jobs requiring 'comparable skills.' . . ." must be paid for on an equal nondiscriminatory basis. 108 Cong. Rec. 14768 (July 25, 1962). Congresswoman St. George, stating her fear that the term "comparable" was too nebulous and would allow "tremendous latitude to whoever is to be arbitrator in these disputes," proposed on the House floor an amendment to change the language "work of comparable character" to "equal work." 108 Cong. Rec. 14767 (July 25, 1962). Congressman Landrum concurred, observing that "[i]f, in fact, we want to establish equal pay for equal work, then we ought to say so and not permit the trooping around all over the country of employees of the Labor Department harassing business with their various interpretations of the term 'comparable' when 'equal' is capable of the same definition throughout the United States." 108 Cong. Rec. 14768 (July 25, 1962). Congressman St. George's amendment was adopted, and in its version of the bill the Senate later employed similar language.

That bill failed in conference action in the adjournment rush at the end of the 87th Congress. It was reintroduced early in the 88th Congress. In that Congress, even the use of "equal" rather than "comparable" terminology did not allay concerns that the enforcing authority—and therefore the courts—"could be cast in the position of second-guessing the validity of a company's job evaluation system."

Corning Glass Works v. *Brennan,* 417 U.S. 188 (1974). Congressman Goodell emphasized that the change from "comparable" to "equal" reflected the fact that "[w]e do not expect the Labor Department people to go into an establishment and attempt to rate jobs that are not equal. We do not want to hear the Department say, 'Well, they amount to the same thing,' and evaulate them so they come up to the same skill or point." 109 Cong. Rec. 9197 (May 23, 1963). Congress accordingly modified the language still further, using language which "ensure[d] that wage differentials based upon bona fide job evaulation plans would be outside the purview of the Act," *Id.* at 201.

When the Equal Pay Act was finally passed, Congress modified the language further using language to which the landmark Corning Glass decision "ensured that wage differentials based upon a bonafide job evaluation plan would be outside the purview of the Act."

One year later, Congress passed title VII encompassing a prohibition against discrimination and compensation on the basis of sex. The Supreme Court in its 5 to 4 decision in *County of Washington* v. *Gunther* instructed us that title VII define sex-based compensation discrimination more broadly than the Equal Pay Act, and that it is not necessary under title VII to show that the jobs are equal in order to support a charge of discrimination.

However, and most importantly for purposes of fairly analyzing the legislation before this committee, the Supreme Court explicitly rejected the notion that title VII encompassed a "comparable worth" component, which would allow plaintiffs to claim—quoting from the decision—"increased compensation on the basis of the comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community."

And as succinctly described by the dissenting Justices, the *Gunther* majority decision held that "there is a cause of action under title VII where there is direct evidence that an employer has *intentionally* depressed a woman's salary because she is a woman. The decision today does not approve a cause of action based on a *comparison* of the wage rates of dissimilar jobs." Ibid. at 204 (emphasis in original).

The teaching of *Gunther*, as reinforced by the opinions which followed, is that title VII prohibits intentional sex-based compensation discrimination. In *Plemer* v. *Parsons-Gilbane*, 713 F. 2d 1127 (5 Cir., 1983), the Fifth Circuit Court of Appeals rejected a plaintiff's attempt to have "the courts make an essentially subjective assessment of the value of the differing duties and responsibilities of the positions [in question] and then determine whether Plemer (the plaintiff) was paid less than the value of her position because she was female." Other courts have similarly rejected the opportunity to "engage in a subjective comparison of the intrinsic worth of various dissimilar jobs," *Connecticut State Employees Ass'n.* v. *State of Conn.*, 31 FEP Cases 191 (D. Conn. 1983), or to "evaluate different jobs and determine their worth to an employer or to society and then, on that basis alone, determine whether Title VII or the Equal Pay Act has been violated," *Power* v. *Barry County, Mich.*, 539 F. Supp. 721 (W.D. Mich. 1982), or to "evaluate the abstract 'worth . . . to society or to an employer' of one job as against another or to compare jobs that differ from one another in their requirements of effort or responsibility or to cross job description lines into areas of entirely different skills." *Briggs* v. *City of Madison*, 536 F. Supp. 435 (W.D. Wis. 1982).

And I'd add that the *ASFCME* v. *State of Washington* case, Judge Tanner did not on his own adopt a comparable worth theory. He, in fact, explicitly noted his opinion was not a comparable work opinion. He merely cited the fact the State on its own conducted a comparable worth study, and for whatever reason chose not to follow it. That was the discrimination in the ASFCME, and it was not a judicial finding that title VII encompassed comparable worth.

It is in this clear, legal context that the purposes of the legislation before this committee must be analyzed. H.R. 5092 purports to "we affirm the provisions in Federal law which declare that equal pay should be provided for work of equal value." As has been shown, there is simply no such provision in Federal law. Rather, this legislation framed in the guise of required reports to Congress which seek to create the Federal law it wishes to receive reports on.

While there is no dispute there is a pay gap between men and women, there is simply no support for the proposition advance that the pay gap is solely the product of discriminatory pay practices of employers.

The term discrimination implies the contravention of a legal obligation. There is no legal obligation requiring that all jobs be compensated equally, or that employers must be seniorily gender conscious in compensating jobs, or that the substance of the job is irrelevant. Only the gender make-up of the job be considered.

This would be the inevitable result if the legislation before this committee were enacted into law. The Ninth Circuit Court of Appeals similarly rejected the proposition that reliance, in part, upon prior salaries in setting current salaries was, per se, discriminatory. This will be the circuit which will review the Washington decision.

The district court suggested that the existence of the wage-gap led to the conclusion that all prior salaries were tainted to sex discrimination and reliance upon prior salary was discrimination. The Ninth Circuit rejected this conclusion and order instead that the employer be given the opportunity to show a rational basis for its compensation decision including the consideration of prior salary, and that the plaintiff be given the opportunity to show pretext in the consideration of prior salary. *Kouba* v. *Allstate Ins. Co.*, 30 FEP Cases 57 (9th Cir. 1982). Thus, at least one Circuit has expressly rejected the propositon that the wage gap is a product of employer discrimination

It is thus clear that the premise upon which H.R. 5092 is drafted is unfounded. Further, the implications raised by the legislation ought to be closely scrutinized. It is unquestioned that wage-setting practices in this country are complex. The National Academy of Sciences recognized this complexity of wage setting in its report "Women, Work, and Wages: Equal Pay for Jobs of Equal Values."

While the National Academy of Sciences recommended that formalized job evaluation procedures might be one legitimate response to the wage gap problem, it did not endorse any one system, or endorse the concept for all employers.

The spate of recent cases points out the complexities in this area. Employers have been found to have violated title VII when they did not implement in whole or in part the pay evaluation plan they voluntarily undertook. To hold employers to the legal standard of discrimination, when they voluntarily undertake a pay evaluation study will serve to chill the incentives to undertake the study, and to directly contradict the National Academy of Sciences recommendation.

Second, there is a clear conflict between the concept of legally mandated compensation comparability, and the effective functioning of collective bargaining.

First, it must be clearly understood that the leadership of organized labor has vigorously and historically opposed job evaluation systems as an appropriate response to wage disparities.

In 1980 A.F. of L. President Lane Kirkland submitted testimony to the EEOC during its hearings on the comparable work issue. In his statement Mr. Kirkland noted:

> An approach that has been suggested to ascertaining discrimination in these circumstances to look at some version of formal job evaluation to provide the neutral measuring stick by which to determine the work of widely differing occupations. It is, we agree, an approach with surface attractiveness, but one that we believe is unavailable at this time. The labor movement has, of course, long been opposed to most job evaluation because it has clearly not been a neutral device but rather a highly value-laden tool typically devised unilaterally by or for employers and solely in their interest. There is no basis for concluding that the job evaluation, where employers have used it to determine pay rates, has produced equitable wage structures.
>
> Certainly job evaluation is not a science in the normal sense of that term, but a disparate series of systems for articulating and structuring subjective judgments.

As Mr. Kirkland clearly stated, job evaluation is an art, not a science. And it would be inconsistent to accord job evaluations to legal standard of determining if discrimination has occurred.

Further, the concept of job evaluation contradicts collective bargaining where external factors predominate in determining wages. The union position on this issue is further clouded by its support for legislation such as the Davis-Bacon Act, and the Service Contract Act, which override all objective measures except for collectively bargained wage rates in determining wage levels on Federal projects. Thus, it is easy to understand the discomfort of Mr. Kirkland as this issue develops.

Third, the legislation before this committee seems to ignore the impact of the market in determining wage levels. It is clear and uncontraverted that women cannot be made to accept lower wages for equal jobs because of their sex. However, there is no law which says that jobs cannot have lower compensation levels because of the surplus of potential employees, a lower requirement for the skills of the job by a particular employer, or yet other factors.

Simply put——

Ms. OAKAR. Wait a minute. Hold everything. You're saying that the reason women are going is because there's a surplus of jobs?

Mr. LORBER. No, what I'm saying is if there are a surplus of employees for any individual job, an employer can certainly pay——

Ms. OAKAR. So women make up the surplus. Is that the way you view it?

Mr. LORBER. No, I'm simply saying——

Ms. OAKAR. Who makes up the surplus you're talking about?

Mr. LORBER. In certain jobs right now there's a surplus of lawyers. I think that men make up that surplus.

Ms. OAKAR. Oh, I see.

Mr. LORBER. Depending on what the job is.

Ms. OAKAR. Well, does that mean automatically that the wages might go down?

Mr. LORBER. That's, in fact, what's going on. To the extent to which the market seems to be operating, where there is a surplus of applicants for any job an employer will pay less, if they can.

Ms. OAKAR. We have a great shortage of nurses in my State, and I don't see their wages going up.

Mr. LORBER. Well, I think Ms. Schlafly cited testimony, and, indeed, I've seen testimony by the American Nursing Association showing that things such as fringe benefits, shift differentials, weekend pay differentials for nurses are now increasing. That's a result of the shortage of nurses which nobody is denying.

Ms. OAKAR. But have their salaries gone up substantially?

Mr. LORBER. Well——

Ms. OAKAR. We often hear the notion that when women go into the labor force they are somehow putting other people out of work. I just wanted to make sure you clarified that.

Mr. LORBER. No; that's clearly not the position we're taking. It's simply that where there is a surplus for employees for any given job, wages will go down.

In New York City there's not a surplus of teachers, and the wages for the public school teachers in New York City now are substantially higher than they are in the suburbs. Clearly, it's not a very attractive job compared to suburban teaching jobs, and the city has to pay more. That's going on in New York City; where there is an excess of surplus of applicants for any job, the wages for those jobs inevitably are going to drop.

If an employer, whatever the employer is, could pay less for a service, less for a function than it has in the past and get that function performed adequately, I don't think so.

Ms. **Oakar**. I think that there's a shortage sometimes of people with really terrific secretarial skills, and that doesn't mean they're paid more.

Mr. **Lorber**. Well, if you were hiring skilled secretaries in this city, I think you'll find that you would pay more, as my law firm does.

Ms. **Oakar**. Well, I'll bet you 20 to 1 that your secretaries don't make nearly the salary that your law firm makes. In fact, maybe for the record, you'd like to state the per-hour wage of a typical lawyer in this country.

Mr. **Lorber**. In this country I simply wouldn't know that.

Ms. **Oakar**. What about Washington?

Mr. **Lorber**. Per-hour wage?

Ms. **Oakar**. Yes.

Mr. **Lorber**. What the lawyer makes? What the firms have to pay?

Ms. **Oakar**. The lawyer.

Mr. **Lorber**. I wouldn't know. Less than $100 an hour, I'm sure. Expenses for the law firms in the city are running over 60 percent of that income.

Ms. **Oakar**. $100 an hour. $150 is more like it, or $200, $250?

Mr. **Lorber**. I wish I knew people like that. In any event, you have to look at the expenses, such as secretaries, such as rent, such as all those other factors.

Ms. **Oakar**. See—what we're talking about is—and I'm not biased against the lawyers in this country—is that lawyer worth more than a nurse who takes care of an intensive care unit?

Mr. **Lorber**. That suggestion——

Ms. **Oakar**. She doesn't make $100 an hour, I want to tell you. You know? She's lucky if she makes $7 an hour.

Mr. **Lorber**. But that's a judgment that this country is making. I mean, lawyers in this country are accorded the status they're accorded in no other countries.

Ms. **Oakar**. Well, what's your judgment on that. If you were in the intensive care unit, would you pay a person $100?

Mr. **Lorber**. Of course I would. And if I were in a docket on trial, I suppose I'd pay my lawyer a lot of money too. It depends what your needs are at the moment.

Ms. **Oakar**. OK.

Mr. **Lorber**. Finally, it is ASPA's position that the legislation before this committee, and the development of this new legal concept, is unnecessary. There is no gap in our current equal employment laws which must be filled by the development of the comparable worth theory. To the contrary, 20 years enforcement of equal employment laws has been based upon the hierarchy of jobs measured in large measure by compensation. The exclusion of women from higher-paying jobs because of their sex is discrimination—should not remedy this wrong by changing the pay level of jobs. Rather, we must insure that access to the better-paying job is available.

And I note that, at least during the Ford administration at the Labor Department when I headed the agency, we brought major actions against such companies as Uniroyal, which resulted in a liability and a payment of $10 million to women. Against the Honeywell Co.; St. Regis; Harris Bank. These were all pay discrimination actions brought in 1976 at a time when nobody was advancing the comparable worth theory; never brought successfully.

Ms. **Oakar**. We asked the Department of Labor to come to this hearing. They wouldn't testify. Was enforcement different under the Ford administration?

Would you say there's a difference? Or do you think that they enforce the law as vigorously as you did?

Mr. **Lorber**. Well, I don't know. I mean, the point is that we enforce those laws, and we did it at a time when nobody was advancing the comparable worth theory.

Ms. **Oakar**. No: I'm asking you for a comparison. Perhaps the issue did not arise because there weren't as many complaints.

Mr. **Lorber**. Well, Madam Chair, I could simply point out that the cases I mentioned were the only cases brought by the Labor Department throughout the 1970's, and that included the period 1977 to 1981. It's not a partisan issue.

Ms. **Oakar**. Who is making it a partisan issue? I wouldn't care who was present today. If they're not enforcing the law, I think that's the issue.

Mr. **Lorber**. Well, we've heard a lot of statements, again, about one administration or another.

Ms. **Oakar**. Well, if you were with the Department of Labor would you advise the Department of Labor to at least send a representative to a hearing like this?

Mr. **Lorber**. That's a decision that departments make. I'm sure they're called upon to testify at a lot of hearings, and I'm not a representative of this administration.

Ms. **Oakar**. I see. OK.

Mr. **Lorber**. I'll just conclude now.

The concept of comparable worth—or in its newer more innocuous term, pay equity—stands this concept on its head. The goal of comparable worth is not workplace integration, but compensation equality regardless of the job or the employer's need. This makes no sense. Nor does it make sense to force one employer who may have gender-concentrated jobs to equalize the wages, and incur greater costs, yet allow a second employer who has the same jobs but is gender-integrated to maintain the current wage rates.

These two employers, in the same industry, and with the same jobs, may thus have different legal obligations regarding compensation levels. The law cannot be so skewed as to require this result.

Employers are required to follow the law, which requires equal access and equal opportunity to all jobs. ASPA believes that fair and vigorous enforcement of existing laws will close the wage gap.

Adoption of these new theories and legal requirements will cause confusion in the workplace, conflict among the equal employment laws, and the further diminution of incentives and compensation goals in our society. We do not believe these results are necessary or welcome.

Ms. **Oakar**. Thank you.

Mr. Bosco?

Mr. Bosco. Thank you, Madam Chair.

Mr. Lorber, as I understand your testimony, you are saying that in the ASFCME case, the Court ruled more narrowly than I have been led to understand from the rest of the testimony.

I have not read the case, but you are saying that the Court did not rule that there is any compulsion under law to grant equal pay for equal work?

Mr. Lorber. Well, it was—the State undertook a comparable study. What the Court said is, the State's decision not to follow this study was discrimination. There was no obligation to undertake this study, and on its own volition the Court would not—every other court has said it would not, and I think Judge Tanner said so too.

On his own, he would not compare worths of jobs. He simply stated, the decision by the State not to follow its own study was the discrimination. The State called the study comparable work.

Mr. Bosco. Did the State enact into statute a requirement that the study be followed or simply that a study be made?

Mr. Lorber. I believe the statute was that the study be made.

Mr. Bosco. And the judge said that simply because they had this study around, that they had conducted some——

Mr. Lorber. That is exactly right, and the theory that the judge based his opinion upon was since the study purported to state that certain jobs, female dominated, were underpaid, the State's decision not to follow the study constituted intentional discrimination, which is all the Gunther report said.

If there is intentionally—intentional payment of a lower rate to a job which is female-dominated, that is discrimination. It is not comparing worths, or anything like that.

Mr. Bosco. So, in other words, the court, in your opinion, said kind of the opposite of "What you don't know, won't hurt you."

Mr. Lorber. That is right. What the court——

Mr. Bosco. And since you do know that you are discriminating, you must remedy it.

Mr. Lorber. No, the study—I mean, the study simply said, the study on whatever the Willis study was, it allocated points to jobs; what the Court said is that the States decision not to follow that study was discrimination; the study itself simply allocated points. I am not familiar with the intricacies of the study except to say that there are other compensation experts who would disagree with its findings, as there would be in any.

Mr. Bosco. And you are extrapolating from that that we are in effect being led into a snare with this legislation in the sense that it calls for the same type of studies and were they to come into existence, the Federal Government could conceivably be held to the same remedial requirements.

Mr. Lorber. The Federal Government is subject to title VII and if it undertook that study and did not follow the results of that study, if the study showed the gender concentrated jobs were under female gender concentrated jobs were undercompensated, under the theory of the district court decision, the Federal Government would have substantial, obviously substantial liabilities.

The point is that the courts themselves, on their own, title VII, do not require anybody to undertake this study, any study such as this.

Mr. Bosco. It is hard to believe though that the court would infer legal responsibilities simply based on what you happen to know or don't know.

Mr. **Lorber**. What that's——

Mr. Bosco. Well, in other words, if the Federal Government is presently discriminating, but doesn't have any study to show it, then it is absolved from responsibility; but——

Mr. **Lorber**. Well——

Mr. Bosco [continuing]. But if we do commission a study that end up showing that our practices are discriminatory, then we must——

Mr. **Lorber**. Well, we can. The studies did not say the practices were discriminatory. It simply assigned a point value to various jobs. If you want to correlate that point value to dollar value, without taking account of the market, or whatever other factors, without taking account of competitive factors, then you will have a compensation study.

What the law says, at least in the compensation area, that was the *Gunther* decision. In the *Gunther* decision the county in Oregon undertook a study saying that male jobs—that male jail guards should be paid at certain level; female job—a female matron paid at a level 95 percent of the males. The females were paid at 70 percent of the males. The discrimination was not that the study found the jobs unequal; it is that the county in Oregon compensated the females at a lower rate than the study would have said, compared to the male rate. That is all that decision said. That was the discrimination.

That is what the Supreme Court said, the majority and the dissent. That is all the decision said. That is the law. If you want to extend the law, Congress should pass the law to do that, I suppose; but the law now does not require jobs to be compensated equally or either an employer or the Government make comparability studies.

Mr. Bosco. Well, I can understand that if either the law in Washington State or the Federal law required any particular practice that it would be a violation of the law not to abide by that practice, but you are, in effect, saying that because they commissioned a study that assigned certain points to particular jobs, even though the legislature did not pay any particular attention, or encode that study into law, it was, in effect, incorporated by reference.

Mr. **Lorber**. That is exactly right. And, in fact, I might add that one of the results as I alluded to in my testimony, there has been, I think, statements by many lawyers, notifying employers, certainly private employers who are under no obligation legislatively or otherwise that they undertake a job evaluation study, an internal equity study at their own peril, the peril of legal liability.

There have been a slew of cases all cited in my testimony which stand for that provision. All of those cases oppose Gunther.

Mr. Bosco. Well, I wanted to be clear of your testimony, because I am going to read the case carefully myself because it seems as if what you say is accurate, it would almost imply that we are better off being ignorant of a lot of things than——

Mr. **Lorber**. I am not saying that. I don't think that the personnel profession would say that. What they are saying is that if the attempt to acquire knowledge brings with it a billion dollar liability, I suppose taxpayers and others may be somewhat hesitant about acquiring their knowledge.

Mr. Bosco. I have had instances where, in my political career, a little bit of acquired knowledge does me a lot of harm too, so, thank you very much.

Thank you, Madam Chair.

Ms. **Oakar**. Thank you.

I think you are misrepresenting what our legislation does. What we are saying is that the law requires that there not be discrimination. You agree with that, don't you?

Mr. **Lorber**. Of course.

Ms. **Oakar**. We are asking that a study be done as to whether or not the law is being enforced.

Mr. **Lorber**. Well, but, Madam Chair——

Ms. **Oakar**. Is that a problem?

Mr. **Lorber**. Well, but your findings of fact——

Ms. **Oakar**. Afraid of what the truth might——

Mr. **Lorber**. Well, I don't know what the truth is. Your findings of fact seem to state that the wage gap is simply the result——

Ms. **Oakar**. You don't feel threatened? You would not feel threatened at all if nurses and teachers were paid more equitably, according to the value of their performance.

Do you think that they are as important as your profession?

Mr. **Lorber**. Personally, I do, but I am not the person who sets the wages, nor did I set the wages——

Ms. **Oakar**. Do you think the free market should and will determine wages?

Mr. **Lorber**. I think the market obviously has a role in setting wages. I am not—I mean, we have heard testimony——

Ms. **Oakar**. Is that where the wages should be set?

Mr. **Lorber**. Well, what is a free market? If I represent employers, if I sat down at collective bargaining and told the union, "I don't want to bargain about wages. What we will both do is commission a study, and whatever that study tells me, that will be our wage rates for the next 3 years."

Ms. **Oakar**. Who should set the standard for wages?

Mr. **Lorber**. Well, in collective bargaining, it is the free play between employers and employ—and their employee representatives.

Ms. **Oakar**. So, you don't agree with Mrs. Schlafly that it is the free market?

Mr. **Lorber**. Of course, I do. I mean that is one aspect to the free market. It is simply—nobody is telling; nobody is setting a standard for what the wages are. It simply sets a mechanism for determining wages, and in that context it is bargaining; and in other contexts——

Ms. **Oakar**. Well, there is a standard. We are saying by law you can't discriminate——

Mr. **Lorber**. But I am asking what is discrimination?

Ms. **Oakar**. On the basis of religion, national origin, sex, et cetera.

Mr. **Lorber**. That is exactly right, but what is discrimination in compensation when you have dissimilar jobs.

Ms. **Oakar**. Um-huh.

You place quite a lot of emphasis on the market theory. When slavery was to be abolished and child labor laws implemented, opponents used the same arguments.

So, I think history will lend itself very well to the fact that the so-called free market theory is not that strong.

Mr. **Lorber**. How are you going to make the determination as to what job should be compensated?

I mean, will the Congress establish laws saying that lawyers get paid x and nurses get paid x-plus 2; teachers get paid x-plus 3, or x-minus 2.

Ms. **Oakar**. We are not even asking for anything that specific. We are asking that there be a study conducted to evaluate where discrimination exists in the classification and pay systems.

How did you determine that? If your answer is the free market, I would say that I have some arguments about that. As a member of the Banking Committee, I noted with great interest that the banks were saying, we are all going to go bankrupt if we have to give credit to women, whether they are married or divorced or single. It is a real burden for the banks.

You know what? It has proven the reverse that when you are fair, industries blossom.

Mr. **Lorber**. I have not not heard anybody, at least the society I represent saying anybody is going to go bankrupt; we are simply saying that——

Ms. **Oakar**. But you feel threatened by the whole issue of fair equity?

Mr. **Lorber**. I don't feel threatened at all.

Ms. **Oakar**. From your testimony you strike me as feeling very threatened. I think the same of your organization. I just want to assure you that nobody is trying to threaten anybody. We are just talking about justice and fairness. We honestly need lawyers, like yourself that are in this kind of business on our side as much as the lawyers who represented AFSCME.

So, we are very pleased that you could come today, and thank you, Mrs. Schlafly, for coming.

I appreciate it.

This is the conclusion of this hearing. We will adjourn today, but will be having future hearings.

[Whereupon, at 3:34 p.m., the hearing was adjourned.]

[The statements and additional information which follow were received for inclusion in the record.]

STATEMENT BY JUDITH FINN

My name is Judith Finn. I am an economist and political scientist from Oak Ridge, Tennessee. I am chairman of Eagle Forum's Task Force on Comparable Worth and served as conference coordinator of our scholarly one and one-half day Conference on Equal Pay for Comparable Worth which we held last October. I have also assisted in the preparation of our new book, *Equal Pay for Unequal Work, A Conference on Comparable Worth,* containing the 19 conference papers which represent many different perspectives and points of view on Comparable Worth.

I do not believe this nation should adopt a standard of "comparable worth" or "equal pay for work of equal value" instead of the present equal pay for equal work standard contained in the Equal Pay Act. Therefore, I oppose both H.R. 5092 and H.R. 4599. These bills are based on the premise that there is an *objective* means to measure the *intrinsic worth* of jobs performed for wages in the labor market. It is frequently asserted by Comparable Worth proponents and others that the National Academy of Sciences' study *Women, Work, and Wages*, has provided the objective means to evaluate job worth better than the market.[1] Some proponents argue that these objective means should replace the market determination of wages because market wages embody discrimination. Others argue that these job evaluation point systems can be used to measure what market wages would be in the absence of discrimination. (Is there any difference?) What the NAS study actually says is that, "In our judgement no universal standard of job worth exists, both because any definition of the 'relative worth' of jobs is in part a matter of values and because, even for a particular definition, problems of measurement are likely."[2] Far from concluding that existing job evaluation techniques provide an objective means of measuring job worth, the NAS study says the use of job evaluation as a standard for comparing the relative worth of jobs is one approach "which needs further development but shows some promise".[3] Given that this NAS study is the supposed source of this crucial objective means, it must be concluded that there is no scientific or objective means to evaluate job worth other than the free market. Job evaluation point systems involve subjective judgements about what compensable factors should be and what the relative weights of these compensable factors should be. Such point systems are not objective and do not produce either a treasure of intrinsic job worth or a measure of market wages in the absence of discrimination.

In my judgment the search for a measure of intrinsic job worth, divorced from market wages, is a misguided effort. In a free economy such as ours wages are strongly influenced by supply and demand. Employers demand very specific skills and pay more for the ones which are in short supply when they need them. For example, assistant professors of engineering at our public universities have salaries that are substantially higher than "comparable" assistant professors of history or literature.[4] These jobs are "comparable" in the sense that they do not differ in the level of skill, effort, responsibility or working conditions. Computing "pay equity" using a single job evaluation system in a university would give these jobs the same evaluation points and thus not permit such a differential to exist. These differences in wages for seemingly "comparable" jobs reflect market conditions and perform a very important function in our free society. Wage differential provide workers with the incentive to acquire needed skills. This in turn allows us to live in an economy that is relatively free of shortages and gluts, while at the same time our citizens have a great degree of freedom of choice in preparing for and entering careers.

If the market works, so well, some will ask, then why do these wage differentials between seemingly "comparable" jobs persist. The answer comes in two parts. First, there *is* a lot of adjustment to market conditions and wage differentials fluctuate with this. Second, part of the wage differential persists because of preferences for some kinds of work over others. Let me explain:

(1) There is ample evidence that wage differentials change with market conditions. For example, the wages of petroleum geologists and petroleum engineers increased dramatically during the nine years following the Arab oil embarge of 1973.[5] This led to a large increase in the supply of these specialists which made possible a large increase in exploration and drilling for oil and gas.[6] These efforts helped to limit spiraling oil prices and lessen dependence on imported oil. This could not have happened if employers were required to identify "intrinsic job worth" using job evaluation and to set wages accordingly. Similarly, the supply of nurses would probably be less today if employers had not been able to increase their wages relative to the wages of other workers over the past three decades.

(2) Some wage differentials do persist through long periods of time. This is sometimes due to market failure, i.e., barriers to entry such as restrictive licensing. How-

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[1] Donald J. Treiman and Heidi I. Hartmann (Eds.), *Woman, Work, and Wages, Equal Pay for Jobs of Equal Value*, (Washington, D.C.: National Academy Press), 1981.

[2] *Ibid.*, p. 94.

[3] *Ibid.*, p. 91.

[4] Average salaries for new assistant professors at public universities are: $28,662 in engineering, $19,125 in history, $19,002 in letters. See, "Average Faculty Salaries by Rank in Selected Fields, 1983-84", *The Chronicle of Higher Education*, February 29, 1984, p. 17.

[5] See "Petroleum Industry Engineering Salary Trends", paper by Donald G. Brown prepared for annual meeting Society of Petroleum Engineers, New Orleans, September 27, 1982.

[6] *Ibid.*

ever, there is no evidence that such barriers to entry fall disproportionately on women as opposed to men. And most of the persistent wage differentials can be explained without recourse to such barriers. English professors cannot cite barriers to entry in the engineering profession as a reason why they studied literature instead of engineering. Social scientists who have looked for barriers to entry in science and engineering cannot find them.[7] Rather, English professors will tell you they are doing what they like best, and perhaps that they didn't have the necessary math skills to become good engineers. Nor can the existence of barriers to entry explain the concentration of women in traditionally female jobs. Sex barriers in access to occupations started to fade long ago and have not existed over the past twenty years. Those who assert the contrary would have a hard time explaining the vast increase in women entering good paying professions such as law, medicine, and engineering during this period. If these kinds of persistent wage differentials between seemingly "comparable" jobs are reduced or eliminated, we can expect a considerable loss of efficiency in the U.S. economy.

Both H.R. 5092 and H.R. 4599 are based on a crucial assumption that is faulty, i.e., that existing male/female pay disparities are the result of "wage setting practices which are based on the sex of employees", or to put it another way that jobs held predominately by women pay less because of sex discrimination. While some social scientists share this belief, they have never produced solid proof that this is so—in spite of the fact that millions of Federal research dollars have funded studies examining this question.

I know that witnesses appeared before this Committee during Pay Equity hearings in 1982 and said that at least half of the pay gap between men women is due to discrimination.[8] They, like the recent New York Times editorial on Comparable Worth, cite the National Academy of Sciences study, *Women, Work and Wages* in support of this view.[9] However, proof of the discrimination hypothesis is not to be found in this book, or in any of the many research studies its authors review. The NAS Committee which prepared this report merely reviewed the existing research on this question, it published no new research findings of its own on the question of whether sex discrimination accounts for any part of the pay gap between men and women. *None* of the studies cited by the NAS study measure discrimination directly. What these studies do is to explain as much of the differences between men and women in such things as years of work experience, years of schooling, and training. For example, one of these studies, said by NAS to be the best of this genre of studies [10] was able to explain 44 percent of the earnings gap between men and women using these variables together with some measures of "labor force attachment".

The remainder of the gap, they concluded, must be due to discrimination and other factors.[11] The reason they fail to simply attribute the residual pay gap to discrimination is that they know their study did not accurately measure all of the factors which could legitimately be related to productivity and thus earnings. They measure some things very imperfectly; for example, their only measure of educational differences is years of schooling, totally ignoring the fact that men study the kinds of subjects which lead to high paying jobs such as engineering and business, much more frequently than women. Also, the authors of the study which could explain only 44 percent of the earnings gap failed to include any measure of several factors which are known to affect earnings. In the view of one prominent economist ". . . the list of those factors producing differentials in productivity and therefore wages, but which can never be controlled for statistically is far longer and potentially far more important than the short list currently entered in any computer".[12] He is referring to such things as work effort and working conditions which are difficult to measure and which these studies do not attempt to measure. And we now have some estimates of just how important some of these omitted factors are. Recent research indicates that job-related accidents and injuries are an important source of earnings differentials.

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[7] Jonathan C. Cole, *Fair Sciences: Women in the Scientific Community*, (New York: The Free Press) 1979.

[8] U.S. House of Representatives, Subcommittee on Human Resources, Civil Service, and Compensation and Employee Benefits of the Committee on Post Office and Civil Service, *Pay Equity: Equal Pay for Work of Comparable Value*, Ninety-seventh Congress, Second session, pp. 12, 72, 615, 943–944.

[9] *New York Times*, editorial, February 17, 1984.

[10] Mary Corcoran and Greg J. Duncan, "Work History, Labor Force Attachment, and Earnings Differences Between the Races and Sexes," *Journal of Human Resources*, Vol. 14, no. 4, 1979, pp. 1–20. Cited in *Women, Work, and Wages . . . , op. cit., p. 19.*

[11] *Ibid.*

[12] Cotton Mather Lindsay, *Equal Pay for Comparable Worth: An Economic Analysis of a New Antidiscrimination Doctrine* (Coral Gables, Fla.: Law and Economics Center), 1980, p. 34.

The earnings of workers in very risky jobs consist in large part of a compensating differential for the risk taken. Olsen estimates that firms in industries with an average level of accidents pay weekly wages 13.6 percent higher than the wages paid to workers in a risk free industry.[13] This is very significant because it is known that women workers have an occupational accident and injury rate about half that of men.[14] This is just one of the factors that was totally ignored by all the studies of sex discrimination, and these data suggest that it alone might explain a substantial part of the "unexplained residual" which is so often (and incorrectly) interpreted as being due to discrimination.

I hope you will not be hoodwinked by political advocates who say that economists have proved the earnings gap is due even in part to discrimination. If you look at the studies which supposedly "prove" this, you will agree with me that this simply isn't so. Numerical disparities between the average compensation in predominantly female occupations compared to male occupations are not evidence of discrimination against women. Lacking clear evidence to the contrary, it should not be assumed that there disparities reflect anything other than individual choices, the fact that men and women tend to choose different occupations, and the dramatically different impact that marriage has on the earnings of men and women. Comparable Worth goes far beyond the concept of equal opportunity and equal pay for equal work in that it seeks to insure equal outcomes, regardless of the causes of numerical disparities between the wage rates in female vs. male occupations.

With respect to the effect of Comparable Worth on the well being of women, I would like to make a couple of points. First, raising the wages for traditionally female jobs would increasse unemployment among women and would therefore only benefit those women who keep their jobs. Comparable Worth would be especially harmful to married men (and their wives) with average or below average educational credentials because these men hold most of the highly paid blue-collar jobs. It is necessary to consider the women who will be harmed because they will lose their jobs altogether or because their husbands' wages will be reduced.

Second, to the extent that such a Comparable Worth standard was successful in raising wages for predominately female jobs, it would lead to a greater oversupply in those fields and reduce the incentive for women to acquire the skills needed to work in traditionally male fields.

Third, it is not true that the increase in the number of women who live near the poverty level is largely the result of employment discrimination on the basis of sex (as asserted in H.R. 5092, Sec. 1.(a)). This simply cannot be the case when, for the first time in many years, the earnings of women are rising faster than the earnings of men. The ratio of annual earnings has gone from 59 to 62 percent. A better measure for this purpose is the Labor Department's "median usual weekly earnings of full-time wage and salary workers." This ratio was 62 percent in 1979 and has risen about one point a year since that time. By the second quarter of 1983 it was 66 percent.[15] I am not an expert on the causes of female poverty, but I know that a major cause is the disintegration of family life in the U.S. Large increases in the divorce rate and the rate of illegimate births are responsible for most of the increase in poverty among women of working age.

Finally, I know of no provision in present Federal law which calls for the application of the Comparable Worth doctrine to the private sector. I do not believe this nation should adopt a standard of "equal pay for work of equal value" instead of the present equal pay for equal work standard contained in the Equal Pay Act. This would produce an endless morass of litigation because of the subjectivity of this concept and because of the conflicting message this would send to the courts as the intent of Congress. In the debate over the Equal Pay Act the Congress considered a Comparable Worth standard and specifically rejected it. If you feel there is now support for a Comparable Worth standard, then I would urge you to attempt to adopt it explicitly by amending the Equal Pay Act. The legislation we are considering this morning, by attempting to bring Comparable Worth in through the back door would produce conflicting standards and great confusion. The Comparable Worth remedy is designed to replace market wages with the wage rates determined by studies performed by experts. Since the experts have no objective criteria to assure acceptance of their results by all parties, court challenges of their work are almost inevitable. Experts setting wages with the oversight of the courts is indeed an unprecedented form of government control, even if it proceeds on a firm to firm basis or only affects those who obtain Federal funds.

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[13] Craig A. Olsen, "An Analysis of Wage Differentials Received by Workers on Dangerous Jobs," *The Journal of Human Resources*, Vol. 16, No. 3, Spring 1981, p. 180.

[14] U.S. Department of Labor, *Perspectives on Working Women: A Databook*, (Washington, D.C.: U.S. Government Printing Office) 1980, (Bulletin 2080), p. 98. See also U.S. Department of Labor, *Occupational Injuries and Illnesses in the United States*, 1975 (Washington, D.C.: U.S. Government Printing Office) 1978, (Bulletin 1981). Table 1.

[15] Nancy Rytina, "Comparing Annual and Weekly Earnings from the Current Population Survey," *Monthly Labor Review*, Vol. 106, No. 4, April 1983, pp. 32–36. Cited in Michael G. Finn, "The Earnings Gap and Economic Choices", in Phyllis Schlafly, Ed., *Equal Pay for Unequal Work*, (Washington, D.C.: Eagle Forum Education and Legal Defense Fund) 1984, p. 117.

STATEMENT OF SOL C. CHAIKIN, PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION

"Comparable worth" has been a matter of major concern to the International Ladies' Garment Workers' Union over many years. It has been the most enduring problem to confront us in the last half century.

The problem—put simply and bluntly—is that garment workers are not paid according to their "comparable worth." They are badly underpaid.

The wages of garment workers, for instance, are about half those of auto workers. This is not due to a difference in skill; it takes as much skill to sew a seam as to work on an assembly line. The difference is not due to any educational requirements for doing the job; the same educational level sufficies for both. It certainly is not due to our society's placing a higher worth on vehicles than on clothing; clothing—along with food and shelter—is basic for survival. Yet the difference persists in hourly wages, in fringe benefits, in annual income—and the gap grows with time.

We are not here suggesting that auto workers are overpaid. We do affirm that garment workers are underpaid.

We cite these two contrasting industries less because of their individual characteristics than because of the differences they represent. Garment workers are typical of labor-intensive manufacture; auto workers of capital-intensive manufacture. In a class with garment workers are workers in footwear, electronic assembly, plastics, metal fabrication, millinery, rubber goods, and all similar operations where there is a low ratio of capital to labor. All in all, they account for about half the employees in manufacture. On the other hand, in a class with auto workers are those in steel, chemicals, basic rubber, oil refining, machine tools, etc., where there is a high ratio of capital to labor.

Wages in these two giant sectors of the economy differ not because anyone has ever established a greater comparable worth in one sector than in the other but because these two sectors of the economy operate under disparate, indeed contrary, rules. The capital-intensive sector is marked by a concentration of ownership (monopoly or oligopoly), by administered pricing, by high productivity per worker hour; the labor intensive sector is marked by diffuse ownership, severe competition, and low output per worker. These different outputs depend less on the motivation or skill of the individual worker, than on tools and capitalization with which he or she works. The technology of the labor intensive sector is simple and inexpensive; technology in the capital intensive sector is sophisticated and costly. The capital intensive sector can pass on costs to the consumer; the labor intensive cannot.

In effect, our economy is a dual economy: the rich portion with high wages and the poor portion with low wages.

We could extend our analysis to go beyond manufacture into the service economy. If we did, we would find that wages in the service economy are—on the whole—lower than in the manufacturing sector. We would also find that within the service economy there is a duality, depending on whether it is private or public, big or small, labor- or capital-intensive.

The one universal truth that runs through all of this is the irrelevance of worth to wages—for most of the economy. The wage is fundamentally a reflection of the market power of a sector of the economy, as affected secondarily by the power of the employees within that sector. The resultant wage is a product of power not of equity.

In this analysis, we have—so far—not mentioned sex. We have not done so because the problem of "comparable worth" precedes the gender gap. The basic problem is less sexual than economic: the underpayment of huge sectors of the labor force that find themselves in those sectors of the economy that most closely resemble our touted ideal of a free enterprise system of open competition.

An examination of the sectors, however, will reveal that there is a disproportionately high percentage of women in the second economy. There is also a disproportionately high percentage of "minorities." And from this observation it may be concluded that the wages in the second economy reflect our society's discrimination against women and minorities.

But there is another way to look at this; namely, that our traditional discrimination against women and minorities has pushed them into occupational ghettos—gigantic ghettos where about half or more of our total labor force toils away at unrewarding remuneration.

We have been comparing one industry as against another because that is what "comparable worth" is all about. This nagging question does not deal with the problem of workers doing the same work and getting unlike pay; there is easy recourse to commission and courts for that. Nor does the question apply to those doing "similar" albeit not the same work: there are regularized recourses for that. The question of "comparable worth" arises when workers are doing unlike and dissimilar work—like sewing a seam versus assembing a car, caring for a patient versus fixing a broken pipe, teaching a class versus digging in a mine.

How does one find the parameters—the factors—to determine the comparable worth of jobs that are unlike and dissimilar?

The bill introduced by Mary Rose Oakar proposes to set up a commission to find ways, to compose—perhaps—a universal formula, by which the true worth, the right pay, can be determined for almost any job in our society. It is a Herculean task. First, all the determinants must be found; then they must be properly weighted; then they must be measured on the job; and all of this must be done with total objectivity by the original makers of the formula and by those who will subsequently apply it.

We think this may well be a worthwhile exercise. If done without prejudice, it will reveal the profound injustice and inequity in our present system of pay; namely, the irrelevance of worth in determining wages in most of our economy. The Commission could also propose the elimination of egregious inequities in the Federal system, in cases where crass disparities are so contrary to common sense and so offensive to normal sensibilities as to require no complicated examination with carefully calibrated measures to establish the unacceptibility of present arrangements.

However, I would suggest that the scope of the Oaker bill be widened. The Commission should have an extended power that goes beyond its search for a formula by which to judge or to determine wages. It may find, as other commissions have found, that it is almost impossible to evolve a formula that is universal and objective. Yet that should not be the end of its mission.

There are ways to narrow the wage and salary gap within our society even in the absence of some ubiquitously applicable measure.

Among some of the steps to consider are the following:

The Federal minimum wage should be adjusted in line with rising prices. A cost-of-living clause in the minimum wage law should be keyed to a fixed percentage of the average wage. In the absence of such an arrangement those at the lower levels of wages—those in the second economy—find that the floor for wages keeps falling in relation to the average wage. The victims of such a growing disparity are disproportionately women and minorities who populate the second economy.

Tax policies should be adjusted to allow for a higher level of exemption for those with a lower annual income. Thought should also be given to lowering the rate of tax for social security for those persons with an annual income below a given level. The present flat tax for social security is distinctly regressive for workers in the low income brackets—again women and minorities.

Our unemployment insurance system should be reexamined with an eye to abolishing "experience rating" in levying taxes. "Experience rating" puts the greatest burdens on employers in those sectors of the economy where employment is most unsteady. Generally, this is the secondary economy where there are many small establishments in constant competition with high seasonality and unsteady employment.

Our national labor law needs reform. Over the years, the National Labor Relations Act—originally written into law to make it easier for workers to organize—has become increasingly a law that has made it more difficult to organize. Those hurt most are, again, workers in the second economy where companies are small, unstable, highly mobile, labor intensive. A Labor Reform Act that would restore the balance between employers and employees in labor-management relations would contribute significantly to raising the earnings of women and minorities who are presently employed in the secondary economy.

Our trade policies require reexamination. In labor intensive sectors of American manufacture the decisive advantage of overseas production does not lie in superior technology or methods of production but in low wages. Wages as low as 14 cents an hour, for instance, in Asia have made it impossible for American producers to compete. As a consequence, in the women's apparel industry, the "import penetration rate" is fifty percent—meaning that one out of every two pieces of apparel sold in the United States comes from abroad. (The penetration rate in labor-intensive manufacture in the United States is much higher than in capital-intensive manufacture). So long as the women and minorities in labor-intensive manufacture in this country are confronted with the incredibly low wages paid overseas, it is not possible to elevate or even maintain present wage levels in the American industry.

Homework on industrial products should be outlawed and the law should be stringently enforced. Industrial homework undermines the wages of women and minorities in labor-intensive industries in the second economy. An auto cannot be assembled in a kitchen; a skirt or hat or a rhinestone studded bauble can. As industrial homework grows, wages of workers in factories will be depressed.

These are some of the avenues worth exploring in a search for ways to elevate wages in the second economy. The above does not necessarily exhaust the possibilities. But it does indicate the need to address ourselves to conditions in the occupational ghettos where women and minorities predominate disproportionately. As we close the gap between the second and first economies we will close the gender and racial gap in earnings.

If we do not address ourselves to the question of the two tier economy, we are not likely to resolve the true problem of comparable worth in the foreseeable future. And if we did it by moving present women and minorities out of their ghettos into better jobs, others—probably Asiatics and Latins or other more recent entrees into the labor market, always heavily female, would end up in the same ghastly ghetto. All we will have done is redistribute misery.

WASHINGTON OFFICE

AMERICAN LIBRARY ASSOCIATION

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April 26, 1984

Honorable Mary Rose Oakar
Chair, Subcommittee on Compensation
 and Employee Benefits
Committee on Post Office and Civil Service
U.S. House of Representatives
406 Cannon House Office Building
Washington, D.C. 20515

Dear Ms. Oakar:

The American Library Association welcomes the opportunity to state its position on H.R. 4599 and H.R. 5092, bills which deal with the issue of equal pay for work of comparable worth in both the federal and non-federal sectors of this Nation.

The American Library Association (ALA) is a nonprofit, educational organization of almost 40,000 members -- librarians, library trustees, educators, authors, and other friends of libraries -- dedicated to the improvement of library service to all citizens. The Association previously has gone on record in support of the concept of equal pay and pay comparability. Dr. Elizabeth Stone, former ALA President, testified on this topic for ALA at a September 1982 hearing cosponsored by your Subcommittee.

Together with other library groups, ALA is concerned about the low status of library workers in relation to comparable professions and occupations, as represented by salaries and position classifications. The pattern is consistent in all sectors of our economy, federal and non-federal, public or private. Although most pay equity cases need to be resolved within the particular jurisdiction which determines the salaries and classifications, we believe that positive action at the national level to identify discriminatory wage setting practices and enforce federal laws to deal with such practices will have a beneficial effect on women in the work force and will encourage both public sector and private sector organizations to deal with these issues.

We applaud the intent of these two bills now under consideration by the Subcommittee. Requiring the Equal Employment Opportunity Commission, the Labor Department and the Justice Department to report on actions taken to enforce federal statutes prohibiting discrimination in compensation is valuable and important. Equally valuable is the effort to identify and remove discriminatory wage setting and position classification practices in the federal government. Although the degree of wage discrimination in the federal government is less than elsewhere in our economy, federal librarian salaries are still 11% below the average salaries for all professional General Schedule occupations according to OPM's own published data. If levels of pay for federal librarians are reduced with the implementation of the proposed classification and qualification standards for the librarian series, GS-1410, then pay equity between librarians and their peers in other professions in the federal government will be even less achievable than it is today.

In view of our experience with the Office of Personnel Management's development of federal library job standards, we have serious reservations about entrusting that agency with the responsibility for studying and identifying discriminatory wage setting practices and wage differentials within the position classification system, as is envisaged in Section 4 of H.R. 4599. Reading Dr. Devine's statement to your Subcommittee further increases our unease.

His description of the standards development process does not square with our experience in the development of federal library job standards in a number of important aspects. For instance, on page 7-8 of his statement, he declares that:

> In the course of an occupational study, the occupational specialist develops extensive and detailed information regarding the work of the occupation and how it is done.... These facts and judgments are obtained from key management officials and supervisors, employees at various levels in the occupation, personnel officials and specialists, professional and technical societies, unions, and other organized groups, representatives of the academic community and others.

Yet our attempts to assist in the standards development to remedy what we considered serious deficiencies in the proposed standards have been consistently rebuffed by OPM. Moreover, the "extensive and detailed information regarding the work of the occupation" gathered by OPM "specialists" studying library jobs appears to have some major gaps. OPM itself, responding to a General Accounting Office study on the proposed library job standards, indicated that files were in disarray, that representative sampling techniques had not been used in conducting the occupational study, and that data collection was so sloppy that information on educational attainment was not recorded for almost half of the 300 professional federal librarians interviewed by the occupational specialists.

On the basis of this inadequate, incomplete, and ill organized data, OPM developed a proposed standard for library jobs which appears to us blatantly discriminatory. The proposed standard, in the last version which we have been allowed to review (released in November 1982), was so unsatisfactory that we felt that only totally inadequate data gathering could have led to such a misrepresentation of the qualifications for modern library and information services work and the scope and responsibilities of positions performing this work in the federal sector. We therefore, as did the Federal Library Committee, asked OPM to withdraw the proposed standards and conduct a new, thorough and valid occupational study. We offered to help with such an effort as did the Federal Library Committee. To date there has been no response to this offer from OPM.

In the proposed standards, as we have been allowed to review them, the qualifications have been radically altered. The entry level for the Master's Degree in Library Science, the chief qualification for the profession, has been dropped to the GS-7 level, although the entry level for the master's degree in other male-dominated professional series has been retained at the GS-9 level, even though the credit hour requirements for the degrees are the same. The proposed classification standard for professional library jobs eliminates the criteria (specifically Factor Levels 1-9 and 5-6) which lead to assignments at the top step of the middle level of federal service, GS-15. This effectively caps the promotional ladder for most federal library jobs one grade below male-dominated professions. No such restrictions are included in the Contract and Procurement Series or the Auditor Series, male-dominated series published after the draft of the Library-Information Service Series was released. Furthermore, duties, responsibilities and assignments for Federal librarians are scaled at lower levels of compensation than for similar male-dominated professions in the federal sector.

For example, where other standards (such as Accountant or Auditor) for male-dominated occupations call for an incumbent's work to have agency-wide impact, librarians at the same level must produce work which has a national impact. Surely this is a significant difference.

The process outlined by Dr. Devine in his testimony before your Subcommittee is fine in theory, but the practice by OPM during his tenure as OPM Director has serious discrepancies with the theory as we have indicated above. Our participation in the review of draft standards for federal library jobs regrettably has become an adversary process. After the storm of criticism aroused by the first issuance of the draft standards in December 1981, only through Congressional intervention were we and other interested groups provided an opportunity to comment, and then only in the most limited way, as Dr. Stone indicated in her testimony before your Subcommittee in September 1982.

Furthermore, under Dr. Devine's leadership, OPM appears to be making sweeping changes in its own established policies without any real justification or empirical study to determine the validity of the current or proposed criteria. A case in point involves the policy for evaluating qualifications based on graduate education, the so-called "common pattern". Instead of adhering to its established policy, OPM is applying revised eligibility requirements on a series-by-series basis beginning with the professional library information series. This capricious application of differential eligibility criteria is discriminatory in its effect. With OPM's current staffing levels and workload, it could easily take until the year 2000 before qualification standards for the approximately 130 professional General Schedule series affected by the "common pattern" are revised on a series-by-series basis. Is this equitable?

The current policy makes completion of master's degree requirements or two academic years of graduate study qualifying for appointment at the GS-9 level. Among the proposed changes which have been most controversial in OPM's draft standards for federal librarians is a proposal which will make only those master's degrees requiring what OPM determines to be two full academic years of graduate education qualifying for entry into the federal service at the GS-9 level. There are virtually no Masters in Library Science programs in this country which meet these new requirements. To the best of our knowledge, OPM has provided no validated justification to determine the validity for this proposed change. Nor, as the GAO study found, has OPM presented any convincing evidence on which to base its downgrading of the present library science master's degree.

The American Library Association has repeatedly urged OPM to retain eligibility for entry at grade GS-9 for federal librarians who hold a master's degree, without specifying that this degree must be based on two years of graduate education. We object to OPM's arbitrarily setting up two "classes" of master's degrees: a two-year degree and a one-year degree. A two-year degree holder would remain eligible for placement at the GS-9 level. A degree based on anything less than two years of study would entitle the candidate for placement at only the GS-7 level as will proof of merely one year of graduate study. This approach is especially puzzling in light of Dr. Devine's professed objection to "over-credentialing."

With this background of experience in dealing with the Office of Personnel Management, we feel that this agency as now constituted and directed is incapable of carrying out the requirements of Sec. 4(b) of H.R. 4599, to study discriminatory practices and propose ways to eliminate them. Therefore we urge that such a study be carried out by one of the well-known private sector organizations with acknowledged expertise in this area, reporting to the General Accounting Office which would in turn report to the President and Congress and make recommendations for eliminating discriminatory practices found. Only in this way, we conclude, can an unbiased study be developed. Similarly we feel that the reporting responsibilities of Sec. 4(d) of H.R. 4599 should be assigned also to GAO. Without such requirements, we do not think that H.R. 4599 can achieve its intended purpose. In our opinion, OPM at this point in its history, sad to say, is not capable of carrying out the mandate in this bill. Under the current leadership, such a study could well become the vehicle to intensify, not mitigate wage discrimination in the federal government.

As it has in the past, the American Library Association will continue to work for pay equity within our profession as well as with coalition groups such as the National Committee on Pay Equity dealing with the issue across all occupations and professions. Our incoming President E.J. Josey will be establishing an ALA Commission on Pay Equity to give even greater visibility to these issues within librarianship. We also look forward to leadership from Congress to address these issues. Such leadership must result in actions to alleviate the persistent wage gap for women and to provide equal pay opportunities for men and women in all levels of government and the professions.

Sincerely,

Eileen D. Cooke

Eileen D. Cooke
Director
ALA Washington Office

EDC:ps

STATEMENT SUBMITTED BY LINDA A. PUCHALA, PRESIDENT
ASSOCIATION OF FLIGHT ATTENDANTS, AFL-CIO
TO THE
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
U.S. HOUSE OF REPRESENTATIVES
ON
PAY EQUITY LEGISLATION

APRIL 13, 1984

On behalf of the Association of Flight Attendants, representing 21,000 flight attendants on 14 airlines, I appreciate this opportunity to present our views on the issue of pay equity, and on HR 5092, the Pay Equity Act of 1984.

The Association of Flight Attendants supports the goals of HR 5092--to identify discriminatory wage-setting practices, to encourage employers to comply with current laws, and to reaffirm the Federal Government's responsibility in enforcing present law. We also heartily commend this subcommittee for providing this forum for public discussion of this issue.

An example of invidious pay discrimination in the airline industry between male and female workers was found in the practice of creating purportedly distinct "flight attendant" (or, as they were then known, "stewardess") and "purser" positions. While both appeared to perform precisely the same functions on board the aircraft, the purser was alleged to have additional "supervisory" responsibilities which merited a substantially higher pay rate than provided to other flight attendants. Not even the alleged differences in duties, however, could explain the airline's restriction of the purser position solely to males, while the flight attendant position was overwhelmingly female. This situation culminated in the landmark Laffey v. Northwest Airlines case first brought to the courts in the early 1970's. (Laffey v. Northwest Airlines, Inc., 366 F.Supp. 763 (D.D.C. 1973), 374 F.Supp. 1382 (D.D.C. 1974), aff'd in part and vacated in part, 567 F.2d 429 (D.C. Cir 1976), cert. denied, 434 U.S. 1086 (1978)).

In this case, the courts pierced through the purser/stewardess charade and saw the situation for precisely what it was: a blatant form of discrimination in pay on the basis of sex. When the "different" jobs were analyzed, the courts had no difficulty in concluding that they required equal skill, effort and responsibility; in sum, they were functionally equivalent. Nor could the alleged differences mask the true goal of the airline: to designate males, and only males, as "in charge" of the cabin crews. The courts concluded there was a clear violation of the Equal Pay Act and of Title VII of the Civil Rights Act, and required the female flight attendants' rates of pay to be "equalized up" to the purser pay levels.

Even after the District Court announced its decision, Northwest refused the union's demands in negotiations to eliminate the purser/flight attendant, i.e., male/female, pay disparities.

As a result of the Company's intransigence, no agreement was reached for several years (while Northwest pursued its unsuccessful appeals in the courts), and the flight attendants were not only deprived of the equalization in pay required by the law, but of any pay increase whatsoever.

Despite the elimination of this blatant example of discrimination, our flight attendant membership, who are 85-90% female, continue to feel the impact of pay discrimination through the shadow cast over our collective bargaining by the traditional sex-related pay inequities in the general U.S. workforce. At the bargaining table our members fight the insidious perception that the flight attendant job is worth "less" because it is predominately female. Compounding this bias is the lingering erroneous stereotype, sometimes shared by airline management, that flight attendants choose their jobs for the "glamour" or for travel opportunities, but not for the salary.

Like the general population of women workers, however, flight attendants work--and work hard--because they need the money to support themselves and their families. Our members have an average of 10-11 years invested in their careers. They are typically in their mid-thirties; approximately one-half are married and one-third have children.

Despite the fact that twenty years ago, Title VII of the Civil Rights Act outlawed sex discrimination in compensation, continuing chronic problems with pay inequities are well documented, and are familiar to this subcommittee.

Although existing law provides a sound legal basis for achieving pay equity, enforcement of the law has been sadly neglected. This is largely due to inactivity of the lead enforcement agency, the Equal Employment Opportunity Commission, and the message this sends to employers that pay discrimination is not very wrong. The problem also stems from immensely difficult and expensive procedures, including extensive job studies, which private parties must undertake in their investigation and ligitation of pay discrimination cases.

HR 5092 proposals for the EEOC to carry out educational programs on eliminating pay discrimination and to conduct research on wage setting techniques could provide valuable assistance to labor unions and other groups which otherwise could not afford to conduct such studies on their own.

The bill's proposals for the EEOC to report to the President and Congress on its pay equity enforcement activities are commendable, because they seek to hold that agency accountable for its actions--or inaction--in this arena. Unfortunately however, since existing law is not enforced, the success of enforcing the proposed bill, if enacted, is questionnable.

As we have found from our experience with airline deregulation, unless a proposed statute is very specific about the content and scope of any remedial provisions, the agency left responsible for implementing these provisions often implements either no program or a program that does not fully implement the statutory protection. For that reason, it might be helpful if HR 5092 were more specific regarding the EEOC obligations to "conduct and promote" research and to "develop and implement a program to provide technical assistance."

Thank you for this opportunity to express our views on this issue.

Statement

of

Edwin R. Clarke, President
E. R. CLARKE ASSOCIATES, INC.
725 Timber Lane
Lake Forest, IL 60045

to

Subcommittee on Compensation and Employee Benefits
Congresswoman Mary Rose Oakar, Chair
U. S. House of Representatives
Washington, D. C. 20515

for consideration
in connection with

H. R. 4599 - The Federal Employees' Pay
Equity Act of 1984
H. R. 5092 - The Pay Equity Act of 1984

April 4, 1984

As a representative of U.S. business and industry with a career spanning more than 30 years in the competitive, profit-seeking, job-providing private sector of this country's economy, I am most grateful for the opportunity to submit this statement in connection with the Committee's consideration of two important pieces of proposed legislation, H. R. 4599, The Federal Employees' Pay Equity Act of 1984, and H. R. 5092, The Pay Equity Act of 1984. My name is Edwin R. Clarke. My present occupation is that of providing consulting services in all phases of Employee Relations and Personnel Practice, including Union relations, compensation plans, employee benefits, etc. My statement today presents my views as a professional with extensive experience in employee compensation systems. I also speak for the American Federation of Small Business, a national organization with more than 25,000 members, headquartered at 407 South Dearborn St., Chicago, of which I am a member.

From 1946 through 1983 I worked in the Employee Relations and Personnel Administration function in several U. S. manufacturing companies and was in charge of the activities of my employers for this function since 1955. Throughout my career, though my responsibilities encompassed many other aspects of the employee relations function, I was personally involved with position-classification systems and wage-setting procedures. The specific activities included negotiating and administering the organization of job duties into job classifications, the application of job evaluation criteria to job classifications, the assignment of job classifications to wage grades, the determination of the wage rates to be paid for each wage grade, etc., and the same for office and management classifications except that no Union was involved. Careful attention to eliminating and avoiding sex discrimination in all wage system design, and in the wage rates pursuant to these systems, has been a high-priority aspect of my involvement in this activity.

The purpose of the two bills, to seek out and eliminate sex-based wage discrimination, is laudable and noncontroversial. The bills seem to suggest, however, that wage rates which are the competitive, market-place rates for any job classifications in question could be challenged as discriminatory. Sex-based wage discrimination, if it can be shown to be present in any situation, is most difficult to quantify because the wage differentials that exist reflect other forces also; for example, supply and demand for particular skills. As a result I have come to the belief that market-place wage rates indicate the best and fairest measurement of the value of a job classification, representing the composite of all the forces which determine that value. Any wage-setting procedures that may be devised, therefore, should be required to convert job evaluation point values to market-place wage rates.

H.R. 4599 is intended as the vehicle for seeking out and eliminating sex-based wage discrimination in the Federal government. However, it seems to apply only to that portion of Federal employees covered by the General Schedule. Why it has not been designed to apply to the craft, etc., classifications, another very large group of employees covered by the Federal Wage System (FWS), is not clear and seems inconsistent.

H. R. 4599 would be implemented principally by the Office of Personnel Management by reviewing the position-classification system (wage-setting practices and wage differentials) which exists pursuant to Title 5, Chapter 51, United States Code. However, this system is the system which the Office of Personnel Management created in implementation of the 1978 Civil Service Reform Act. One provision of the Act was that there should be equal pay for work of equal value. Other key provisions are (Section 2301(b)(3)) that pay rates are to be determined "with appropriate consideration of both national and local rates paid by employers in the private sector", and (Section 5301 (a)(3)) that "Federal pay rates be comparable with private enterprise pay rates for the same levels of work." Certainly, therefore, it must be presumed that the grade assignments of the classifications and the wages paid complied with the Act, especially the requirement that there should be equal pay for work of equal value; in other words, regardless of whether the classification populations were predominately male or female. It will be unlikely, then, that OPM will discover classifications which have been incorrectly graded. The review will be beneficial, nevertheless. However, Section 2 (b)(1) of H. R. 4599, which seems to call for changes in the present system of evaluating General Schedule jobs, seems unnecessary in view of the fact that the present system was instituted under the "equal pay for work of equal value" directive.

At this point it is appropriate to state my conviction, developed over many years of working with wage-setting systems, that all systems of job evaluation are inadequate to the task of establishing true relative values for job classifications. Basically the reason is that the values indicated are the result of factor selection and weighting as determined by the person or group that had a certain objective in making the factor selection and assigning the weights. Perhaps the objective was to match market-place wage rates. Perhaps the objective was to prove that sex-based wage discrimination was present. Whatever objective there may be can be pretty well achieved by the designers of the system. A requirement that job evaluation point values be translated to market-place wage relationships is not a perfect method of minimizing the weaknesses of job evaluation systems, but I believe it is the best method available for giving job evaluation realistic validity.

When job evaluations are performed with deliberate disregard for market-place information, the results are invalid, troublesome and costly. An example of such is a recent study involving a sample of State of Illinois jobs commissioned by the Illinois Commission on the Status of Women. The job evaluation system chosen gave an average of approximately 75% weight to Knowledge and Problem Solving, 20% weight to Accountability, and the rest of the weight to Working Conditions, which, in that system of evaluation encompassed Physical Effort, Environment and Hazards. The 5 jobs in the sample of 24 jobs that required out-of-door, all-weather work involving physical effort and relatively hazardous conditions ranked far below/their relative rankings in market-place wage rates. The job evaluation system chosen happens to be described in the interim report to the Equal Employment Opportunity Commission of the Committee on Occupational Classification and Analysis, National Research Council, entitled Job Evaluation: An Analytic Review in the following quoted words: "---used primarily for the evaluation of executive and professional jobs-----language used in factor definitions emphasizes subjective judgments to an even greater degree than most job evaluation systems----virtually no weight is given to working conditions." As a result of this study one Charge has already been filed with the Equal Employment Opportunity Commission against the State of Illinois citing the relative rankings in this study as evidence that sex-based wage discrimination exists. Court proceedings have been promised as soon as the EEOC completes its phase of the handling of the Charge.

I wish to emphasize that the Illinois study intentionally disregarded market-place information and did not attempt to relate the rankings produced by the job evaluation process to the realities of the job market.

Any one of several other job evaluation systems that exist and are well known could have been used in the Illinois study. Each one would have produced a different relative ranking of the jobs in the sample, depending on the factors used in the evaluation process and the weights assigned by the designers of the system. Without doubt, however, each of the designers of these available systems would give assurance that his system design is free from sex bias. Which system should be used then? Would it be possible to determine the existence of sex bias and its impact on wage rates in any such circumstances?

H. R. 5092 will involve the private sector as well as all public employers. It will cause Federal agencies to contact private and public employers using the "equal pay for work of equal value" concept. Results like those described resulting from the Illinois study will be the consequence unless, as in the Federal GS system, a directive is included that the market-place must be the true measure of relative classification rates.

Maintaining the vigor and competitive strength of our free enterprise system is of great importance to all citizens including women. A vigorous and successful business climate means job opportunities. Successful business requires freedom to manage and do the things that may be necessary to serve customers with competitively-priced goods. The business that is competing against imports probably will not be able to pay the same wages for the same job in a company that has only domestic competition to worry about. The imposition of wage scales by outside authority, especially wage scales derived in a system of job evaluation designed to meet a social goal, would be most unfortunate and would certainly have an adverse impact on the vigor of business in general and on the availability of jobs. The imposition of artificial, non-market rates in the public sector will strongly and adversely impact the private sector.

Elimination of sex-based wage discrimination, if in fact it exists, will certainly be assisted by focusing attention on it, rooting it out whereever found. However, other measures different from imposing artificial wage rates, etc., should be emphasized in the effort. Among measures of this type that I suggest are: much greater publicity about job openings, rates of pay, and job requirements; training programs and facilities in which females can learn the skills that the market-place is rewarding best; counseling programs in which females can survey their own interests and talents, learn what steps are required to become employed in kinds of employment they decide upon, and make career plans.

The Male – Female Income Gap

Statement of Robert J. Van Der Velde
to the
Subcommittee on Compensation and Employee Benefits
Committee on Post Office and Civil Service
U.S. House of Representatives

I am a Research Assistant at the Northern Ohio Data & Information Service (NODIS) in The Urban Center at Cleveland State University and this statement details the preliminary findings of our study of the male-female income gap using data from the 1980 Census.

Our data confirm what many already suspect, which is that there are substantial gaps between the incomes of men and women, even men and women with the same education, the same age, and the same occupation. These gaps exist in state government, local government, and to an even greater extent in the private sector. Our data suggest that the complex matter of gender discrimination in employment is worthy of further legislative examination.

Numerous studies have been done nationally examining the male-female income gap. The Census Bureau reports that, nationally, working women now earn 62¢ for every dollar earned by men. Sociologists, economists and others have examined this issue to try to explain the income gap. With the recent release of data from the 1980 Census, we at NODIS are now able to begin to look at income patterns both locally and state-wide.

We have found that women in Ohio earn 55¢ for every dollar earned by men. The median income in 1979 for full time employed males was $17,005, but for women the median income was only $9,315. (Chart 1).

The good news is that women who work in state government are somewhat better off than their counterparts in the private sector. Women in state government earn more than women working for private companies, and they have incomes more similar to those of men in state government. Women employed by private companies earned less than 2/3 (or 58¢) of every dollar earned by men, while women in state jobs earned 85¢ for each dollar earned by men. Even though state government women are closer to state government men, they still lag behind the earnings of men.

Chart 2 shows that the income gap between men and women with the same educational levels is lower for women in state government than in the private sector. Two factors account for this. First, women in state government earn somewhat more than women in private companies. Second, men in state government jobs are earning substantially less than men in the private sector. The combination of these two factors means that the gap between men and women of the same education is smaller for state government workers.

Young women earn incomes closer to those of young males, although there are still substantial gaps between the sexes. (Chart 3)

Because of our location, much of our study has focused on data for the Cleveland area, although we see many of the trends in the Cleveland region reflected across the state.

When we examined the income gap between men and women in Cuyahoga County, we found that disparities between men and women are present regardless of the age, education and occupation of the worker.

Women earned less than men with the same years of education in nearly every occupation category in Cuyahoga County. Women earned higher salaries than men in only a few predominatly female occupations, such as librarians, waitresses and data entry workers.

Chart 4 shows that female median income remains relatively stable with age, while income for males rises at a much steeper rate and remains consistently higher than female income.

The income gap remains when analyzing incomes of men and women who are similarly situated -- that is, men and women who have the same age, education and occupation. In analytical groups of similarly situated men and women, only 16 of over 500 groups had women earning more than men, and only a few of these groups accounted for substantial numbers of people.

Over 100 years ago, a Justice of the U.S. Supreme Court wrote in denying a woman admission to the bar "THE NATURAL AND PROPER TIMIDITY AND DELICACY WHICH BELONGS TO THE FEMALE SEX EVIDENTLY UNFITS IT FOR MANY OF THE OCCUPATIONS OF CIVIL LIFE". While many women hold highly responsible positions in our society, our data show that the sentiment which lay behind this 19th century view remains strong even today.

Working women are highly concentrated in only a few traditionally female occupations. A third of all working women in the Cleveland metropolitan area are in just 40 out of 500 occupations. Only 14% of women are in occupations that have roughly the same number of men and women, while more than half of all occupations in the region are predominately male.

We are certainly not experts in the field of gender discrimination. We have only just scratched the surface of the data on the Ohio male-female income gap. There are a number of other factors that we want to examine -- factors that may explain much of the income differnce between men and women.

For example, women leaving their careers for even a short time for child-rearing may have significantly lower salaries. Other factors, such as veteran preferences; single-parenthood; spouse's education and career; and numerous other variables may also be significant.

We plan on continuing our analysis of the income gap, looking at these and other factors, but we have come to some preliminary conclusions based on our first look at the 1980 Census data.

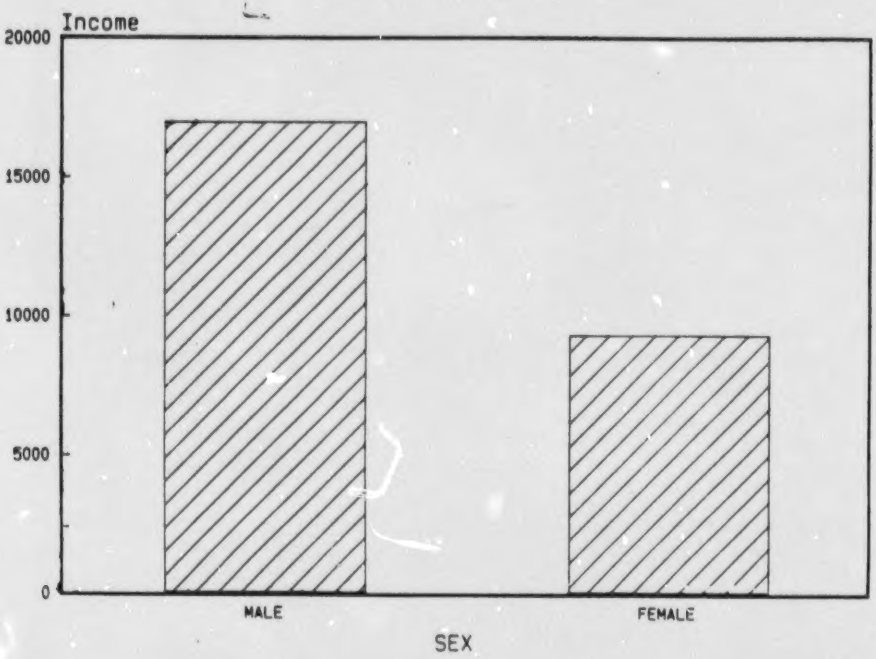
First, while we cannot scientifically prove that sex discrimination exists, we can state that there are dramatic disparities between men and women, even between men and women of the same age, with the same education, and in the same occupations.

Second, disparities between men and women are greater in the private sector than in state government. Even though state government appears to be more equitable than the private sector, there are gaps between men and women in state government, so the disparities must be examined for both state government and private business.

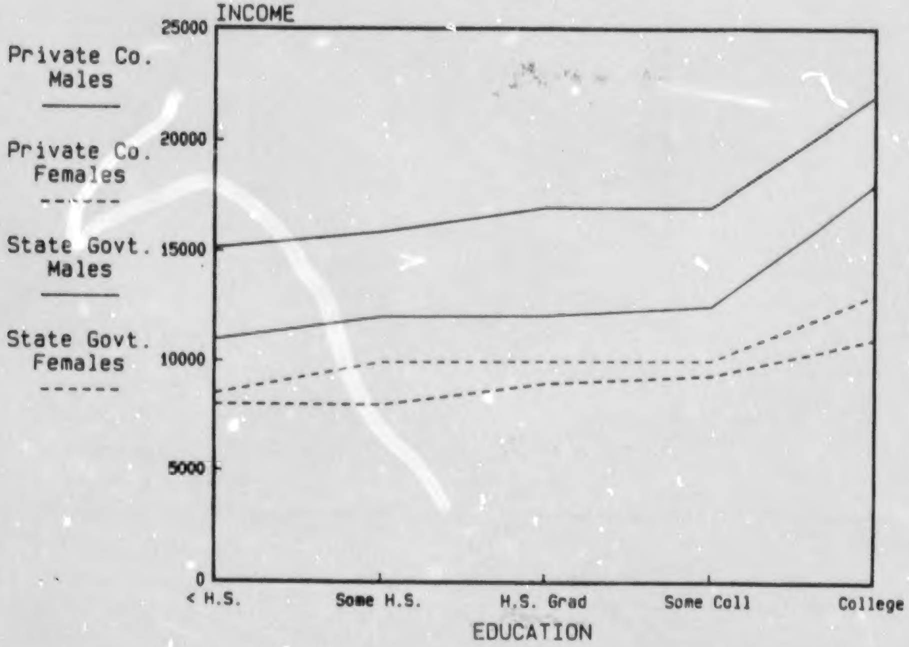
The data suggest that the issues of gender discrimination are clearly complex, and that the problem of the male - female income gap in both the public and private sectors is worthy of further legislative examination.

We appreciate this opportunity to present you with what we hope will be useful information for the committee's work.

MEDIAN INCOME BY SEX
OHIO, 1979

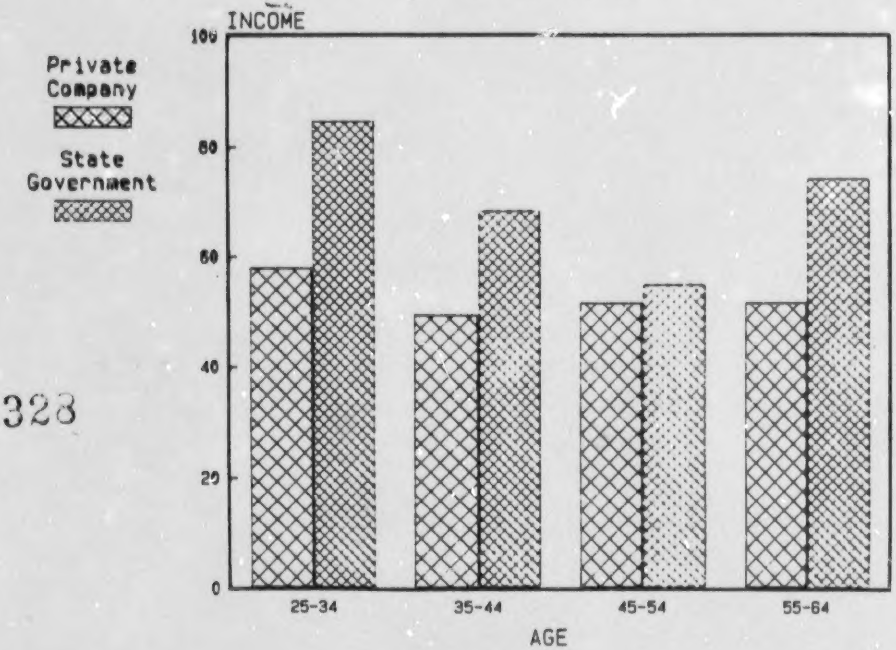


MEDIAN INCOME BY SEX
OHIO, 1979



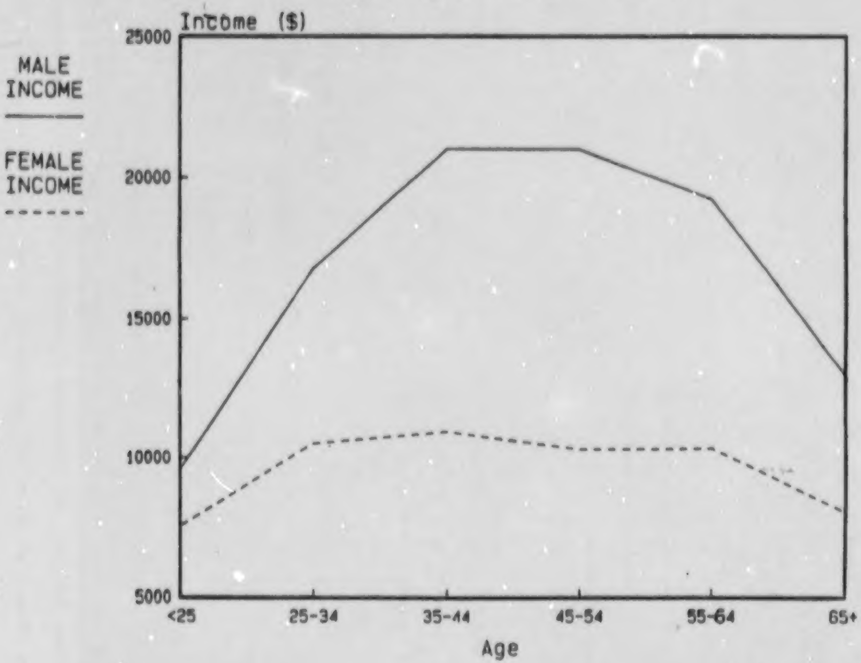
FEMALE CENTS PER MALE $

Ohio, 1979



MEDIAN INCOME BY AGE

Cuyahoga County, 1980



STATEMENT OF TERRY LEE HART, PRESIDENT, FEDERALLY EMPLOYED WOMEN LEGAL AND EDUCATION FUND, INC.

The Federally Employed Women Legal and Education Fund, Inc. (FEW LEF) is a non-profit, tax-exempt organization established in January 1977. It is managed by a volunteer Board of Directors, most of whom are current or former federal employees. They include attorneys, EEO specialists, federal managers, and EEO complainants. FEW LEF works exclusively on behalf of Federal employees, or applicants for federal employment, to eliminate discrimination based on sex, religion, race, national origin, handicap, age, marital status, or lawful political affiliation. To achieve this purpose FEW LEF undertakes educational, research, and legal activities.

Because FEW LEF believes that pay equity is a major component of equal employment opportunity for working women in federal service, we strongly believe that the federal government should provide a leadership role in achieving this goal. We disagree with those leaders of the business community who argue that pay equity represents a radical violation of the free market; moreover, we are deeply concerned that the Reagan Administration has reversed the positive approach taken by former EEOC Chair Eleanor Holmes Norton, who declared comparable worth to be the issue of the '80s. We also see pay equity as an important issue of the '80s for federally employed women, and are delighted that the Subcommittee on Compensation and Employee Benefits is moving to translate pay equity from abstract concept to reality.

Sex segregation in jobs and depressed pay levels have been as much a problem for women inside the federal government as for their counterparts in society as a whole. The vast majority of federally employed women remain trapped in occupational ghettos at lower levels of pay. According to 1982 figures, fifty-seven (57) of every 100 women in the federal government work in clerical jobs; only ten (10) of those 100 work in professional jobs Ninety-nine percent (99%) of the secretarial series are women (GS-4); 85% of the Library Technician series are women (GS-5); and 91% of the Medical Record Technician series are women. Although women hold only 22% of the professional jobs, they are highly concentrated in the stereotypically women's jobs within the professions. Thus, for example, 99% of the Public Health Nurse series are women (GS-9), and 96% of the Home Economics series are women (GS-10).

Federally employed women are at the bottom of the wage scale not only throughout the spectrum of federal jobs, but even within the same job series. Seventy-eight (78) of every 10 federal women are in the lowest GS grouping (GS 1-8); 22 are in the middle grade (GS 9-15) and only 4.1% are in the Senior Executive Service (formerly grades 16-18). Men also outearn women in each of the 22 major occupational groups, and in all but 43 of the 449 specific job series in the federal white collar service. Within the four major occupational groupings, major salary gaps exist between men and women. Men earn $1.45 for every $1 earned by women in professional jobs; $1.29 for every $1 earned by women in administrative jobs; $1.26 for every $1 earned by women in technical jobs; and $1.27 of every $1 earned by women in clerical jobs.

In our view, a primary cause of the continuing low wages of traditional women's jobs in the federal workforce is the General Schedule job classification system, which perpetuates institutional sex discrimination. The General Schedule was expressly designed in 1949 to preserve the pay and job relationships established in the 1923 Classification Act. In fact, according to government officials, the hierarchy of federal white collar work has remained the same since 1923. This in tantamount to an admission that the system still incorporates traditional societal sex discrimination in the form of lower wages for women in women's jobs.

The General Schedule classification system is a factor evaluation system which, although it has the potential for implementing comparable worth through objective measurement of traditionally male and female jobs, is far from bias free. A study commissioned by the EEOC released in the Fall of 1981 by the prestigious National Academy of Sciences, "Women, Work and Wages, Equal Pay for Jobs of Equal Value," discusses the features of most job evaluation systems which foster, rather than eliminate, sex discrimination. (pp. 73-90). These features are, unfortunately, also found in the federal factor evaluation system. Most notably, those factors which are key components of women's jobs are given little recognition and weighting. The supervisory controls factor, which is more likely to characterize male jobs, is more heavily weighted than the complexity factor, which is more likely to characterize female jobs. Other underweighted factors characteristic of women's jobs include speed and fine motor requirements (e.g. typing, data processing); level of physical and psychological danger (social work, nursing); and negative work conditions (noisy typewriters and ringing telephones, characteristics of secretarial work). We believe that the underweighting of these factors under the General Schedule classification system contributes substantially to the low grades for women's jobs in the federal sector. We trust that, under HR 4599, OPM will give serious consideration to the sex-discriminatory underweighting of these factors which characterize women's jobs in federal service.

We have some concerns about the present wording of HR 4599, which we would like to share with the Subcommittee.

1. Subsection 2 of the Definitions section, Section 3, presently defines "discriminatory wage-setting practices" as the "setting of wage rates paid for jobs held predominantly by female workers lower than those paid for jobs held predominantly by male workers although the work performed requires comparable education, training, skills, experience, effort, and responsibility, and is performed under comparable working conditions." We believe this is too narrow a definition of discriminatory wage-setting practices, and would not cover such obvious inequities as higher payment to male-dominated laborer jobs which often require less than comparable education and training in comparison with female-dominated jobs such as professional nursing and school-teaching. Also, it is questionable whether the other factors included -- skills, experience, effort, and responsibility -- would be comparable either for these two jobs.

The language also could encourage a narrow, factor-by-factor comparison of jobs rather than an overall comparison of their worth as a whole. The present language sounds similar to the federal Equal Pay Act, which also covers skills, effort, responsibility and working conditions, and has been held to require that jobs be equal in each separate factor, not just in the totality of factors. See Angelo v. Bachrach Instrument Co., 555

F.2d 1164 (3d Cir. 1977). However, common job evaluation plans such as the one involved in the recent court decision of AFSCME v. State of Washington arrive at a total point score by adding up the points for each rating factor of a job. The final result is thus an overall score which represents a composite of the scores for each rating factor. We would much prefer language emphasizing the comparison of jobs as a whole. We would also suggest omitting separate comparison of the factors of education and training which, under most standard job evaluation plans, are already subsumed under the factor of skills. We propose substituting the following language:

> Sec. 3 (2) "discriminatory wage-setting practices" means the setting of wage rates paid for jobs held predominantly by female workers lower than those paid for jobs held predominantly by male workers where the work performed by the female workers is of at least comparable value in the overall composite of skill, effort, responsibility and working conditions.

2. Subsection 5 of the Definitions section presently defines "equitable job-evaluation technique" as: "a job evaluation technique which, to the maximum extent feasible, does not include components for determining the comparative value of a job that reflect the sex, race, or ethnicity of the employee." We think this definition should specifically exclude the use of market wage rates as a component for determining job value. We believe that market wage rates incorporate discrimination. However, some argue that the "market" is neutral. In order to avoid any dispute on this issue, we would prefer the following language:

> Sec. 3(5) "equitable job-evaluation technique" means a job-evaluation technique which, to the maximum extent feasible, does not include components for determining the comparable value

> of a job that reflect the sex, race or
> ethnicity of the employee, or the market wage
> rate for such job.

The study and correction of sex-based inequities in the federal job classification system will be of significant benefit to the government as an employer and as the primary enforcer of the country's civil rights laws. While serving as a model for eliminating sex-based wage discrimination throughout the society, the federal government will also, incidentally, reduce its own liability under employment discrimination and pay equity laws, such as the Civil Service Reform Act of 1978. That Act mandates "equal pay for work of equal value." Presumably, wages are to be increased for a number of underpaid women's jobs, thus increasing the morale of its substantial female federal workforce. Most important, the immoral and illegal exploitation of federally employed women will cease. Thus far, however, we have seen little or no compliance with the Act's mandate.

We thank the Members and staff of the Subcommittee on Compensation and Employee Benefits, for holding this hearing and for permitting us to submit our testimony.

FEDERALLY EMPLOYED WOMEN
LEGAL AND EDUCATION FUND, INC.

TERRY HART LEE
President

SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS -

HEARING ON H. R. 5092, THE PAY EQUITY ACT OF 1984

PROONENT TESTIMONY April 3, 1984

by the WOMEN'S EQUITY ACTION LEAGUE (WEAL)
OF OHIO, Elizabeth Boyer, Attorney at Law
and President of Ohio WEAL, of record,
7657 Dines Road, Novelty, Ohio 44072
(216) 338-3374

Members of Congress and friends. WEAL of Ohio strongly supports the passage of legislation to bring about equitable pay for women in public employment, in the form of H.R. 5092, The Pay Equity Act of 1984. We believe that benefits to the economy as a whole, as well as to women, will result from paying women fair wages in accordance with comparable worth and wage equity concepts.

On April 26 a hearing on this issue in Cleveland, chaired by Rep. Mary Boyle, resulted in a considerable amount of testimony showing wage discrepancies. Separation of job categories into predominantly male and predominantly female jobs was prevalent, and female-dominated jobs received lower pay, often by a considerable margin.

Both registered nurses and licensed practical nurses were found to be underpaid, if cognizance was given to their training, broad areas of duty, and heavy responsibility.

Ohio was pointed out as being extremely job-segregated into predominantly (over 75%) male or female jobs in many areas.

This situation has persisted in even more aggravated form ever since women found employment outside the home. The first typists, for example, were men, until women were found to be willing to work for "pin-money."

The free enterprise system and free-market economy are time-hallowed in our democracy, but they are not evolving rapidly enough to bridge the gap between women's responsibilities today, and women's pay.

This hiatus of malfunction is based on a lag in willingness to face facts. The concepts regarding "women's jobs" and "women's pay" are based on a world long-gone. When I was a child in Fremont, Ohio, a paperhanger and a department store clerk who lived on our street supported wives and families on their sole earnings. Of course those were the days of the five-cent loaf of bread, the ten-cent yard of gingham, and the food donations from the family farm. And of course in those days it was every girl's prime duty to track down and marry "a good provider."

Nowadays very few men can provide a home for a non-working wife and children. SEVEN PERCENT is the most recent figure, and it is constantly shrinking. The other 93% are now the norm.

The winds of economic change have become a hurricane, a tidal wave, in which women are being engulfed. One result is the poverty of children living in households headed by women--a national scandal. Another national disgrace is the vast number of elderly women living out their last years in poverty after a lifetime of hard work, because their low earnings and job status placed capital accumulation and adequate pensions out of their reach.

These are facts to be faced. The problem must be attacked on all fronts. Women must be educated to reach their highest earning potential; child-support collections must be stringently enforced; illegitimate births must be deterred; women must be acculturated and urged to enter non-traditional fields.

But if all these good things took place tomorrow morning, we would still be left with an enormous period of hiatus. The effects could not be immediate. Women would still occupy job fields which receive significantly less pay than those dominated by men. For the next few decades this problem, also, will continue to force women into a hardship status unless it is corrected.

And correcting this inequity will require drastic action. It will be resisted. Employers will view the loss of their cheapest labor pool, women, in the same light as plantation owners viewed the freeing of the slaves!

THE WALL STREET JOURNAL, for one, considers the imposing of comparable worth regulations as being undesirable. In an editorial on January 20, 1984, it stated that a job evaluation system would be "inefficient" to set wages. Furthermore, it claimed, comparable worth would reduce women's incentives to seek access to non-traditional jobs.

We, too, would agree that this latter would be an undesirable result, and we will continue to acculturate against it. We will welcome the JOURNAL's cooperation in this endeavor; we didn't know they cared!

However even the JOURNAL admits that public employment, since it does not have to produce a competitive product for the marketplace, could more readily submit to comparable worth standards. We might consider another point: tax moneys should be spent for equitable hiring. However we must observe that the current administration's Justice Department, also supported by our taxes, is poised to object to the comparable worth concept as soon as they dare.

Public employment is a large segment of the job market. Comparable worth regulations in this area would raise women's wages in a considerable segment of the job market, and hence would offer women a whole area of better-paid employment opportunities. This, in turn, would afford women some lateral employment mobility which they do not have at the present time, and in truth have never had.

Let me give a personal example. Many years ago, shortly after relocating in Cleveland, I worked in a technical publishing house, first as an editor, then as an assistant publisher. One day I was called into the front office and offered the job of my immediate superior, who had just been fired. I was offered a salary of $3,000.00 per year, when I had good reason to believe that my predecessor had been earning about $30,000.00. One-tenth seemed somewhat skimpy, even then, so I demurred, and asked for more money.

I will never forget the response: "Women's brains around this town are a dime a dozen. Take it or leave it. If I advertise this job I will have a lineup of applicants halfway around the block."

And the statement was true. The employer knew it and I knew it. He had the whip hand. And to this day such one-sided negotiations take place. It seems to be every employer's dream to KEEP women as a cheap labor pool. Without lateral job mobility women will never be able to bargain for equal earnings.

In the past this injustice to women was endured, with the thought on each woman's part that the fault must somehow be her own. Now the problem is too widespread to be ignored or deferred. It affects too large a segment of our population. Too many women must support not only themselves but their children or their aging parents. The gradually-evolving (and much publicized) advancement of a relatively few women in non-traditional fields cannot correct the vast bulk of the problem in the immediate future. The problem affects the general economy, as it thrusts many women into a needlessly dependent status, and all viable means must be used to alleviate it.

There will be difficult comparisons to be weighed. For example, women's upper-body strength, since it is on the average less than men's, has often been used to justify wage differentials, even though heavy lifting was infrequent or could have been done mechanically. As one of my consultants pointed out, it is common for the blue-collar workers to receive a much higher wage than the whitecollar workers in the same plant. Brawn, she remarked, is more highly valued than brains.

Several of my consultants remarked that the professions now seem to be more equally paid, except when it comes to promotions. And one person observed that the initial salary arrangement, arrived at by bargaining, followed the professional on through her entire job tenure. This, of course, results from women's relatively weak competitive position in bargaining for salary at the time of hiring.

Faced, on the one hand, with a dire need for job earnings, and on the other hand with employers who are quite aware that they can "get away with" offering women less money, women applicants are forced to simply settle for what they can get. A long, long period of retraining and re-acculturation will be necessary before this stranglehold is loosened. Legislation seems to be the only answer to bridge the gap.

The Washington State vs. AFSCME victory (thus far) in the courts gives us a ray of hope, and those regulations, since they are now court-approved, might serve as a model for adoption.

Our opponents in this matter, who benefit from the continued existence of a cheap labor pool, will immediately cry Over-regulation! Interference with a free market economy!

But let us ask ourselves, why should a free market economy be sacrosanct when the Chrysler bail-out was so recently approved? It bent the rules far more than our present demands for the imposition of comparable worth standards in public employment.

WEAL of Ohio therefore strongly endorses the proposed Pay Equity Act of 1984. We believe that pay equity for women is a clear necessity when households headed by women are being dubbed "the new poor."

Respectfully submitted.

STATEMENT OF DAVID R. BENDER, PH.D., EXECUTIVE DIRECTOR, SPECIAL LIBRARIES ASSOCIATION

The Special Libraries Association (SLA) makes the following statement in support of H.R. 4599, "The Federal Employees' Pay Equity Act of 1984", introduced on January 23, 1984, to promote pay equity and eliminate certain "wage-setting practices" within the Federal Government's civil service. The SLA is an international organization of more than 11,500 librarians, information managers, and brokers. Approximately 2,500 SLA members are employed in libraries/information centers of various federal government agencies, in their regional offices, and in U.S. military installations throughout the world.

The SLA would like to go on record as supporting the concept of equal pay for work of equal value. The Association's official position is outlined in its publication entitled Equal Pay for Equal Work: Women in Special Libraries. SLA also supports the efforts of those librarians who have documented and are challenging the practice of discriminatory salaries for librarians which are not commensurate with pay for comparable predominately-male professions that require similar levels of education, experience, responsibility, and working conditions. Numerous examples can be cited which illustrate that the Equal Pay Act of 1963 has not closed the gap between men's and women's wages. A case in point exists in Virginia, where one county has established and maintains a sex-segregated job classification system, and pays lower wages to traditionally female occupations. At the entry level, where the librarians are required to have a Master's degree and to exercise supervisory responsibility, they are paid approximately $900 less than employees in male-dominated professions such as Planner I and Naturalist I, which require no more than an undergraduate degree and have no supervisory responsibilities. This practice has brought EEOC charges against the county. Indeed, Virginia is not an isolated incident. Since mid-1981 nurses and city-workers in San Jose, Calif., school secretaries in Anoka, Minn., and clerical workers in Allegheny County, Pa., have engaged in battles over pay-equity issues, to name only a few examples. Bruce Nelson, a leading Title VII defense lawyer declared in a speech in Washington, D.C., "that public employers seem to be more vulnerable to the equity argument than private employers." He also said that "the most horrendous fact situations arise in the public sector."

As a result of initiatives at the state level, several states have undertaken job evaluation studies. One of the earliest was conducted by Washington state in 1973-74, and recently culminated in the landmark decision in support of comparable worth. Initial studies there found that women were mainly clustered in library, secretarial and teaching jobs and earned an average of $175 per month less than those--mostly men--who held comparable jobs as truck drivers, warehouse workers and electricians.

Michigan, Minnesota and Nebraska have undertaken studies similar to Washington, designed to document the extent of wage discrimination against women. Other states such as Wisconsin, Iowa, Idaho and New Jersey, have also conducted job evaluation studies.

However, pay equity problems are not limited just to state governments. Last year, during hearings before this committee, the Subcommittee on Compensation and Employee Benefits, witnesses presented testimony which dramatically demonstrated the disparity between salaries earned by men and women in comparable jobs in the federal government. While states are moving slowly to redress these inequities in their work force, the federal government has yet to take the initiative to deal with pay equity problems in its work force. Indeed, several actions taken by the U.S. Office of Personnel Management, if implemented, will further widen the gap. For example, new draft standards developed for federal librarians, a predominantly female occupation, would have the effect of lowering average salaries for women by downgrading at the enty level. While this action is occurring classification series where men predominate, such as accountant and economist, remain unchanged. Clearly then, OPM is part of the problem, not part of the solution.

If H.R. 4599 is enacted, SLA would urge that the federal government be directed to take the route being followed by the states and seek the advice of private-sector consulting firms which are expert in job evaluation techniques and who have conducted similar studies in the various states.

In closing, to paraphrase from an article which appeared in the *New York Times* of March 22, 1981, ...for many the promise of equal pay for equal work is an empty one. Unless men suddenly flock to secretarial schools and kindergarten classes, there is no hope that anything will happen. Only a reassessment of how "women's work" as a whole is compensated is likely to change the economic equation.

STATEMENT OF HON. MARY O. BOYLE, HOUSE MAJORITY WHIP, OHIO HOUSE OF REPRESENTATIVES

Madam Chairperson and members of the Subcommittee on Compensation and Employee Benefits. Thank you for allowing me the opportunity to present this written testimony on the pay equity issue. I commend your efforts and the efforts of the Subcommittee toward investigating pay inequities in the country, as I believe this is one of the oldest and most persistent symptoms of inequality in the United States. While many people believe the situation of employed women has improved markedly, the facts indicate otherwise.

As Chairperson of the Subcommittee on Pay Equity of the House Select Committee on Employment and Civil Service in the Ohio House of Representatives, I have conducted five hearings around the State of Ohio to gather public testimony from the private and public sector on the status of pay equity in Ohio.

The testimony we have received thus far indicates that there is indeed a problem in Ohio. Robert Van Der Velde of the Northern Ohio Data and Information Service in the Urban Center at Cleveland State University testified on the findings of his study of the male-female income gap using 1980 census data. Van Der Velde found that women in Ohio earn only 35¢ for each dollar earned by men; in Cuyahoga County women earned 56¢ for every dollar earned by men. State government women workers fare better, earning 85¢ for every dollar a man earns, but private sector women employees earn only 52¢ for every male dollar.

Race is another significant factor when looking at pay equity. Black women earn 48¢ to every dollar earned by white men in Ohio's private sector. Van Der Velde also found that although significant disparities exist between the income of black and white men, black men earn more than white women in the private and public sectors, with black women earning the least of all.

The American Federation of State, County and Municipal Employees (AFSCME) has conducted a preliminary pay equity analysis of Ohio's state employees which shows that the state employees are largely segregated by sex within job classes and that there is a clear pattern of lower wages for the female-dominated job classes. Governor Richard F. Celeste has established a commission to investigate the possible inequities in state employee salaries; results of the study should be available late this year. However, in listening to the public testimony around the state, we recognize that this problem extends much further than state government. Women from a variety of employment sectors have contacted us, and time and time again the story remains the same: a loyal, dependable, respectable employee with many years of experience with the state or with a company makes so little that she needs food stamps to feed her children.

I applaud the leadership of Congresswoman Oakar for tackling this issue at the national level. Pay inequity is a national problem, and although the State of Ohio is fortunate to have public officials concerned about this issue, many states are not so blessed. National leadership is sorely needed, and we appreciate your Subcommittee's efforts toward that end.

Thank you for allowing me the opportunity to report on the progress of pay equity in Ohio.

STATEMENT OF GOLDIE WAGHALTER

My name is Goldie Waghalter. I am a consultant to Council Member Eleanor Tinsley. It is a pleasure to be here. My purpose this morning is to share with you some of the results of my study concerning economic equality for women employees of the Houston City Government. First I will provide some background information.

As you well know, much progressive legislation on behalf of women's rights has passed in the last two decades. The Equal Pay Act, Title VII of the 1964 Civil Rights Act, and Executive Order 11246 are a few examples. The fact that this legislation was necessary is in itself revealing. For, if the history of our cultural development led to positive attitudes toward women, highly rating the status of women, perhaps the concerns would today be achieving equal rights for men. In researching the early history of Confucian, Judaic, Judaic-Christian, and Islamic traditions, all were highly paternalistic, all giving most rights to men, and all placing women in an inferior status.

These attitudes did not change much through the centuries. Even in the 18th century, Benjamin Franklin wrote it was essential for women to be educated, but only so that men could give them proper direction. He believed that nature designed men as superior and invested them with a directing power in more difficult and important affairs in life. Thomas Jefferson felt that women were unfit in brains and character for serious study. Women were seen as emotional rather than logical. Men were active and independent; women passive and dependent. Even Freud felt that a woman who was not passive, who wished to participate outside the home or pursue an intellectual profession, was neurotic.

Unfortunately, women themselves believed in these stereotypes. Women who accepted this view of themselves were socially rewarded. It is no wonder that few women even questioned the fact that men often recieved greater pay for the same job. Personallay, in 1965, when I was an entry level elementary teacher, I agreed with the rationalization that male teachers deserved higher salaries as they were the 'breadwinners.' I was unaware that of all women workers 40% were heads of families because they were single, divorced, separated, or widowed, or whose husbands earned less than $10,000 per year. Despite these lingering views, many women have yearned for equality in the family and in the workplace. The explosion of the women's movement in the 1960's and 1970's resulted in many quesioning the wage disparity between male and female workers.

With all our progressive legislation, how are women doing in the labor market? You are all familar with these statistics. Nationwide, in 1955, women's median wage was 64% of men's wage. By 1970, women's median wage was only 59% of men's and dropped to 57% in 1979. 89% of the jobs paying $15,000 or more were held by white males nationwide in 1975. Women who have completed 4 years of college earn less on the average than men with an 8th grade education. Clearly, mere passage of legislation is not enough to ensure equal rights.

Two factors have been established about women workers in the U.S. One is that females earn less on the average than men. The second is that females have long been concentrated in relatively few occupations; clerical and service positions at the bottom of the pay scale.

I became involved with the study on salary inequities of employees of Houston City government because of a request from Council Member Eleanor Tinsley. One of two women elected to the Houston City Council for the first time in the history of the City of Houston, Council Member Tinsley asked if I would undertake a research project on some aspect of city government. We chose to investigate women in city government, partly because of a campaign promise by Council Member Tinsley and a desire on her part to improve opportunities for women, and a personal interest on my part. We decided to limit the study to salary and advancement opportunities for women.

In 1980, the greatest concentration of female employees in city govenment (51%) were in clerical positions. Some 93% of the city's clerical employees were women. And even here, men were apt to earn more than women on the average. Also, the clerical category had the lowest salary of all categories. As of January 1983, ninety per cent of clerical employees were women, a drop of three per cent.

In January 1980 men earned an average of $466 bi-weekly and women earned $401 bi-weekly on the average (86% of male salaries.) In January 1983 male average salaries was $725 bi-weekly while females earned $603 bi-weekly (83% of male salaries.) These figures are exclusive of police and fire employees. The gap is widening.

In January 1980 there were 3549 women working for the city out of 10,660 employees (exclusive of police and fire) or, 32.2%. In January of 1983, 4,388 women out of a total of 12,800 were employed, or 34.3% (exclusive of police and fire employees.)

It is important to point out that discrimination is often not intentional by city officials or department heads. Often discrimination is subtle. The above figures do not mean that discrimination is responsible for the differences in salaries. For example, within a category, Official/Administrator, most of the higher decision-making positions are held by white males. Females and minorities are hired into lower classifications. Salaries will often be very unequal. Often they perform very different jobs, with males getting the most lucrative positions. However, the City of Houston represents itself as an equal opportunity employer. Results of employment practices determine whether discriminaion exists, not the intent.

I designed a questionnaire in 1980 in cooperation with the Affirmative Action Division to deterrmine perceptions of city employees about employment practices. Employees perceived discrimination in pay differences for employees doing basically the same job and discrimination in promotion practices. Women on the whole felt more discriminated against than men. Also, a higher percentage of women applied for promotions than men but more men actually received promotions. The question to address is whether this pattern is discriminatory in nature or whether characteristics of the employees can explain this wage disparity.

Many reasons are offered as explanations of why men earn higher salaries than women. Some say women are not motivated; others say women are not as well educated or have not worked as long. Council Member Tinsley and I felt an indepth investigation of why the salary differences persisted was necessary. I performed an analsis of the salary differences as my masters thesis.

A random sample of 1000 city employees was selected. Civil service records were reviewed to determine age, years of employment with the city, education level, performance and type of position. A statistical procedure, regression analysis was performed. This study showed that salary discrepancies were not due to age, years of employment with the city, education level, performance or type of position. After the controls, women still earned an average of $138 bi-weekly less than men. Minorities earned an average of $107 bi-weekly less than white employees.

A black male city employee earned $4,160 per year less than a white male, on average or approximately 15% less; an Hispanic male earned $5,018 less; a white female earned $5,278 or 18% less than white males. Minority females were affected by a double whammy. Black females earned $6,786 or 29% less than white males. Hispanic females earned on average 30% less, $6994 less than white males.

The pattern continues: 31.3% of white males earned over $30,000 per year; 15% of minority males earned over $30,000. Only 7.8% of white females earned over $30,000 and a mere 1.7% of minority females earned this much.

About 35% of the men with college degrees earned over $30,000 while only about 10$ of the college educated women earned this much. Men with a highschool or lower education level earned more on the average than women with a college degree. However, more men do have college degrees, 45% compared to only 27% of the women employees.

One of the things we found in the city was an apparent departmental difference in opportunity for greater salaries. In some departments, officals and administrators earned much higher salaries than officials and administrators in other departments.

In light of these results, Council Member Tinsley made several recommendations. The city must actively recruit and promote qualified women and minorities into higher paying positions.

Also, the city pay structure needs to be reexamined. Training programs are necessary to to enable women and minorities to move into higher paying and nontraditional jobs. Women will probably retain segregated jobs for a long time. The idea of comparable worth deserves serious attention.

The study itself appears to have an impact on the progress of women employees. Information concerning the city work force generates a lot of publicity. City officials want the city to reflect a positive image. With Council Member Tinsley continually focusing on this issue, many departments have taken a more serious attitude toward affirmative action. The role of watchdog is an important one.

Much has been done, but even more is required for effective change. The city loses when we do not take advantage of the available talent and resources of our employees and potential employees.

STATEMENT OF SUSAN R. MEISINGER
DEPUTY UNDER SECRETARY FOR
EMPLOYMENT STANDARDS
U.S. DEPARTMENT OF LABOR
BEFORE THE
HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE
SUBCOMMITTEE ON COMPENSATION AND EMPLOYEE BENEFITS

April 4, 1984

Madam Chair and Members of the Subcommittee:

Thank you for the opportunity to submit our statement to your Subcommittee today on H.R. 5092, the Pay Equity Act of 1984. As you know, I was recently named Deputy Under Secretary for Employment Standards, and I also am continuing to serve as Acting Director of the Office of Federal Contract Compliance Programs (OFCCP).

OFCCP is the office in the Department of Labor's Employment Standards Administration (ESA) which has the responsibility for administration and enforcement of the three equal employment opportunity mandates which make up the contract compliance program--Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974, 38 USC 2012. Our mission is to ensure that Federal contractors do not discriminate in their hiring and employment practices with regard to race, color, sex, religion, national origin, handicap or veterans status, and that they take affirmative action in their hiring and employment practices.

All contractors with government contracts or subcontracts exceeding $10,000 are obligated not to discriminate and to take affirmative action under Executive Order 11246. Section 2012 of Title 38 of the U.S. Code applies to government contracts and subcontracts of $10,000 or more. Coverage under the Rehabilitation Act is based on a government contract or subcontract of $2,500 or more.

To fulfill its role, OFCCP investigates complaints and conducts compliance reviews of covered contractors in order to monitor their contractual obligations. Upon receipt of a complaint, OFCCP reviews the complaint for adequacy of information, jurisdiction and timeliness. Individual complaints filed under E.O. 11246 which also fall within the jurisdiction of the Equal Employment Opportunity Commission (EEOC) are referred to the EEOC in accordance with a Memorandum of Understanding entered into between that agency and OFCCP on January 23, 1981. However, OFCCP does investigate E.O. 11246 complaints alleging class-type discrimination, and all Section 503 and 38 U.S.C. 2012 complaints.

OFCCP also schedules routine compliance reviews to assure adherence to statutory and Executive Order requirements. These reviews generally consist of a desk audit, and an on-site and off-site review of a contractor's employment policies and practices to determine compliance with the nondiscrimination and affirmative action requirements. During the desk audit, a contractor's affirmative action program (AAP) submissions are reviewed. A major part of the AAP submission is compensation data for employees. This helps begin the process of identifying discriminatory compensation policies and practices. An analysis of compensation policies and practices is accordingly a required component of all compliance reviews we undertake.

The on-site review consists of a more comprehensive analysis of any problem areas identified during the desk audit, and may include interviews of employees and a review of personnel records, such as salary histories, performance standards and performance evaluations.

We identify any apparent pay discrepancies to the contractor and analyze the contractor's explanation. At that point, we conclude whether we believe there is any discriminatory discrepancy. Where any significant pay discrepancies are found, they are either resolved by a conciliation agreement or a settlement agreement (if only one individual is involved).

Thus, in carrying out its responsibilities, OFCCP routinely investigates allegations of discrimination in wage payment practices that adversely affect wages of minorities and women. OFCCP vigorously enforces the Executive Order and the two other laws for which it is responsible as they apply to sex discrimination. We have interpreted the substantive nondiscrimination provisions of the Executive Order to be the same as those under Title VII of the 1964 Civil Rights Act.

Section 4 of H.R. 5092 would require the Secretary of Labor, acting through OFCCP, to submit a report to Congress and the President every 6 months. These reports would describe actions taken during the preceding 6 months to enforce prohibitions against sex discrimination by Federal contractors. The bill states that each report "shall include at least the following information:

(1) The number of complaints alleging discrimination in compensation filed with the Office.

(2) The number of compliance reviews conducted by the Office which included an examination of compensation practices.

(3) The number of enforcement actions brought before an administrative law judge in which discrimination in compensation is alleged.

(4) The number of enforcement actions referred to the Department of Justice with a recommendation to file civil action in which discrimination in compensation is alleged."

While we would have no difficulty in reporting this information to Congress, we believe that requiring reports of this nature is unnecessary as OFCCP could supply this information without a statutory requirement.

At this time, for example, we can provide the following data for FY 1983:

(1) 97 wage discrimination complaints were filed. Of these, 29 were sex-based wage discrimination complaints.

(2) 4309 compliance reviews were completed. (This compares to 2632 in FY 1980--approximately a 60% increase since 1980.) These compliance reviews include Rehabilitation Act investigations under Section 503 and investigations under 38 U.S.C 2012. Of the 4309 compliance reviews conducted in FY 1983, OFCCP identified 304 deficiencies or violations in the wage-salary area.

(3) There were no enforcement actions brought before administrative law judges in which discrimination in compensation was alleged.

(4) There was one enforcement action filed in Federal District Court by the Department of Justice, U.S. v. Whitney National Bank.

Thank you for the opportunity to comment on this bill. I hope this information is useful to the Subcommittee.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARGARET MARY GRUMBINE,
Plaintiff,
v.
UNITED STATES, et al.,
Defendants.

Civil Action No. 82-1938

FILED
APR 3 - 1984
JAMES F. DAVEY, Clerk

OPINION

This case involves a significant issue of first impression: what is the meaning of the term "establishment" under the Equal Pay Act for purposes of employment in the federal government?

Plaintiff Margaret Mary Grumbine was a Regional Counsel of the Customs Service assigned to Baltimore, Maryland. At all times pertinent to this lawsuit, the Customs Service was divided into nine regions[1] and so was the Chief Counsel's Office of that Service.[2] Although each of the other eight individuals serving as Regional Counsel in the Customs Service, all of them male, had a GS-15 rating, and although plaintiff's immediate predecessor, also a male, had that same GS-15 rating, plaintiff herself was classified and paid only as a GS-14. The government defends this action basically[3] on the ground that each Regional Counsel's Office is a separate "establishment" for purposes of the Equal Pay Act, and that, accordingly, it was not required to pay plaintiff at the same rate as the individuals serving as Regional Counsel in other "establishments," that is, elsewhere in the United States. Plaintiff and the Women's Legal Defense Fund, which was permitted to participate as amicus curiae, argue on various bases that, at least in the context of the federal Civil Service, the term "establishment" has a far broader meaning.

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[1] The Regional Offices were located in Boston, New York, Baltimore, Miami, New Orleans, Houston, Los Angeles, San Francisco, and Chicago.

[2] The Office of Chief Counsel is one section in the Legal Division of the U.S. Department of the Treasury.

I

The Equal Pay Act, 29 U.S.C. § 206(d), enacted as an amendment to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq, was "intended as a broad charter of women's rights in the economic field." Shultz v. Wheaton Glass Company, 421 F.2d 259 (3rd Cir. 1970). To that end, it was designed to eliminate all wage discriminations based on sex which the Congress had found in 1963 to continue to exist on a substantial scale.[4] The issues in this case must be considered with these basic purposes in mind.[5]

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[3] But see Part IV infra.

[4] See, e.g., 109 Cong. Rec. 9199 (Rep. Green); 109 Cong. Rec. 9212 (Rep. Ryan); 108 Cong. Rec. 14957 (Rep. Pubinski); 109 Cong. Rec. 9212 (Rep. Donahue); and see the statement of President Kennedy on the occasion of the signing of the Equal Pay Act, June 10, 1983, XXI Cong. Q. No. 24, p. 978 (June 14, 1983).

The government does not deny that Margaret Mary Grumbine was classified in a lower grade and was paid less than her male counterparts in the other Customs Service regional offices. In defense of that disparity, the government relies on section 206(d)(1) of the Act which provides in pertinent part that

> No employer . . . shall discriminate, within any establishment . . . between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work (emphasis added).

In the government's view, the "establishment" to which the Court must look to determine whether plaintiff was underpaid is the Office of Regional Counsel in Baltimore -- not the Civil Service, the Department of the Treasury,[6] or the Treasury's Office of Chief Counsel (with its nine subordinate Regional Counsels).[7] If that interpretation of the law is correct, plaintiff's classification and pay could not have violated the Equal Pay Act since there was no one in the Baltimore "establishment" who had a position like plaintiff's -- she was the one and only, *the* Regional Counsel in that city.[8]

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[5] As Justice Frankfurter observed in United States v. Dotterwich, 320 U.S. 277, 280 (1943),

> [r]egard to [the purposes of a law] should infuse construction of the legislation if it is to be treated as a working instrument of government and not merely as a collection of English words.

[6] The Women's Legal Defense Fund advocates a construction which considers the Civil service or the Treasury as an "establishment" for Equal Pay Act purposes.

[7] Plaintiff appears to suggest that the Office of Chief Counsel is the appropriate "establishment."

In defense of its interpretation, the government points out, correctly, that in a number of cases under the Fair Labor Standards Act the courts have held that an "establishment" is a "distinct physical place of business,"[9] and that employees working in separate locations or offices should not be compared for Equal Pay Act purposes.[10]

These lines of cases certainly do exist, and they hold what the government claims for them. However, in a number of other instances, and particularly in recent years, courts have not taken a strictly geographical view of the term "establishment" but have considered a multi-location employer to be a single establishment.

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[8] On that basis, she would not have been paid "at a rate less than the rate at which [the government paid] wages to employees of the opposite sex in such establishment for equal work," in the words of the statute. There was no one in the Baltimore office, either of the same sex or of the opposite sex doing work equal to that done by the Regional Counsel. Thus, if plaintiff had been paid one-half or one-quarter as much as her counterparts assigned by the Customs Service's Chief Counsel to other cities, there still would have been no Equal Pay Act violation.

[9] See, *e.g.*, *Mitchell* v. *Bekins Van and Storage Company*, 352 U.S. 1027 (1957); *Phillips Company* v. *Walling*, 324 U.S. 490 (1945); *Brennan* v. *Yellowstone Park Lines, Inc.*, 478 F.2d 285 (10th Cir. 1973).

[10] See, *e.g.*, *Gerlach* v. *Michigan Bell Telephone Co.*, 448 F. Supp. 1168 (E.D. Mich. 1978); *Alexander* v. *University of Michigan-Flint*, 509 F. Supp. 627 (E.D. Mich. 1980).

The seminal decision in that regard is that of Judge Rives, writing for the Fifth Circuit, in Brennan v. Goose Creek Consolidated Independent School District, 519 F.2d 53 (5th Cir. 1975). That case involved alleged differentials in pay between men and women working as janitors for a school district composed of thirteen geographically separated elementary schools. There, as here, the argument was made that each separate geographic entity, i.e., each school, was a separate "establishment" for purposes of the Act. Relying on such facts as that the central administration of the school district did the hiring, determined the wages, and assigned the employees, and further that the duties of the various janitors did not differ from school to school, the court held that all the janitors were employed by a single "establishment" for purposes of the statute. To the same effect, see Marshall v. Dallas Independent School District, 605 F.2d 191 (5th Cir. 1979); Alexander v. University of Michigan-Flint, 509 F. Supp. 627 (E.D. Mich. 1980); EEOC v. Maricopa County Community College District, 29 Fair Empl. Prac. Cas. (BNA) 383 (D. Ariz. 1982).

The question before the Court, then, is how these various decisions may be reconciled with each other and, more important, how they may be squared with the congressional purpose. It appears to the Court that, at a minimum, a distinction should be drawn for Equal Pay Act purposes between private and public employment.

The term "establishment" as a geographical concept had its root in the congressional effort to exempt certain local business establishments from the minimum wage and maximum hours provisions of the Fair Labor Standards Act.[11] Since coverage depended upon the volume of sales in any particular State,[12] it made sense to give to the term "establishment" a geographic meaning, and the older cases did just that. But this reasoning has little relevance to the Equal Pay Act provisions of the Fair Labor Standards Act, and even less so in the area of governmental employment, where typically central supervision exists and pay standards apply for an entire system irrespective of where the employee happens to be located. It would hardly make sense to permit an employer to rely on a geographic "establishment" concept in defense of an unequal pay practices when that employer has itself adopted a uniform, non-geographic pay policy and system.

It was on this basis that the courts in the more recent decisions referred to supra have departed from geography in applying the Equal Pay Act and have considered a public employer with a number of locations to be a single establishment.

11/ See, e.g., 29 U.S.C. §§ 207(h), 213(a)(2), 213(a)(3).

12/ There are no similar exceptions with respect to federal Civil Service employees; no federal "establishments" are exempt from the minimum wage and maximum hour provisions of the Act.

Even the Department of Labor, upon whose regulations[13/] the government strongly relies,[14/] has taken this view. It has not followed a "distinct physical place of business" rule in enforcing the Equal Pay Act against public employers. In fact, in such cases as Brennan v. Goose Creek, supra, and Marshall v. Dallas School District, supra, it was that Department which brought the suits against the multi-location employers, claiming that they had violated the Equal Pay Act by paying female employees in one location less than males in another.

[13/] See 29 C.F.R. § 800.108.

[14/] The Court rejects that reliance for several reasons. In the first place, the Civil Service Commission, not the Department of Labor, had administrative authority over federal employees under the Fair Labor Standards Act (29 U.S.C. § 204(f)) and the Labor Department regulations therefore lack binding authority. Moreover, these regulations were issued before the Fair Labor Standards Act was amended to include federal employees. See 30 Fed. Reg. 11504, as amended by 31 Fed. Reg. 2657 and 32 Fed. Reg. 2378. Further, these regulations were never regarded even by the Department as anything more than interim regulations pending ultimate resolution of the issues treated therein by the courts (see 29 C.F.R. § 800.2) and on that basis they do not reflect more recent law discussed supra. Finally, as noted above, the Department itself has filed Equal Pay Act suits without regard to geographic limitations.

The Equal Employment Opportunity Commission, to which enforcement authority for the Equal Pay Act was transferred from the Department of Labor (Reorganization Plan No. 1 of 1978, 43 Fed. Reg. 19807 and 44 Fed. Reg. 37193) has promulgated proposed regulations which are quite different from the regulations of the Department of Labor; in fact, they support plaintiff's interpretation of the Equal Pay Act. See 46 Fed. Reg. 43848. Thus, whatever force remained with the Labor Department regulations has long been dissipated.

It is clear from these decision that, at least for purposes of public employment,[15] the geographic reach of the term "establishment" is not automatically determined by geography, as the government would have it, but depends upon the degree to which the particular governmental entity has centralized its personnel administration.

It remains to be determined how these principles are to be applied to employment in the federal Civil Service.

II

The principle of equal pay regardless of sex was adopted for federal employment more than sixty years ago, with the Classification Act of 1923. That statute provided that

> [i]n determining the rate of compensation which an employee shall receive, the principle of equal compensation for equal work irrespective of sex shall be followed.[16]

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[15] It may also be that, for the reasons discussed above, the "establishment" concept should not be given a narrow geographic focus where a private employer operates a highly centralized employment system. However, it is not necessary to decide that issue in this case, and the Court does not do so.

[16] Classification Act of 1923, ch. 265, 42 Stat. 1488 (1923) § 4 (repealed 1949). Although the Act initially applied only to employees stationed in the District of Columbia, this was subsequently extended to field offices. See Act of December 6, 1924, ch. 5, 43 Stat. 704; Act of March 5, 1928, ch. 126, § 2, 45 Stat. 162, 163.

This principle was reaffirmed and broadened in the Classification Act of 1949 which remains in effect today.[17] Under that Act, the equal pay principle is not limited to employees working in one place. government-wide standards are issued by the Office of Personnel Management (see 5 U.S.C. § 5105)[18] and position classification decisions must comport with the equal pay principle. Haneke v. Secretary of Health, Education and Welfare, 535 F.2d 1291 (D.C. Cir. 1976).

There is nothing in the Classification Act to suggest that Congress intended compliance with the equal pay principle to be limited by geographic location. The statute contains no such restriction, and the decided cases have superimposed none. To the contrary, the entire point and purpose of the various civil service laws is to provide uniformity of treatment for all employees, regardless of location.[19]

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[17] Classification Act of 1949, ch. 782, § 101(1), 63 Stat. 954; see also, P.L. No. 89-554, 80 Stat. 378, codified at 5 U.S.C. §§ 5101-5115 (1976), amended in 1978 P.L. No. 95-454, 92 Stat. 1111, codified at 5 U.S.C. §§ 5102-5115.

[18] The application of the standards to the classification of individual positions in accordance with these principles is the responsibility of the head of each executive agency. 5 U.S.C. §§ 5102, 5107.

[19] The national scope of the equal pay principle with respect to the Civil Service is underlined by the fact that, when Congress wished to depart from that principle, it explicitly said so. Thus, 5 U.S.C. §§ 5341 et seq. recognizes that, with respect to certain classes of blue collar workers, the wage rates may differ depending upon the locality. As regards the Foreign Service, which also has a pay scheme unlike the regular Civil Service, see Osoky v. Wick, 704 F.2d 1264 (D.C. Cir. 1983).

In implementation of that purpose, Congress has devised a number of means for ensuring that the principle of equal pay for equal work applies to the Civil Service in its entirety, as distinguished from fragments, whether geographic or otherwise. Thus, Congress has vested oversight responsibility for all classification decisions in the Office of Personnel Management (OPM).20/ Moreover, OPM hears all appeals of classification decisions;21/ it conducts independent reviews of the classification decisions of each agency;22/ and it has power to revoke the classification authority of an agency when it finds that the agency is not placing positions in grades in conformity with the published standards.23/

There is no basis for supposing that, when Congress adopted the Equal Pay Act, it intended to restrict the scope of the pre-existing federal classification and pay system or to impose upon the federal government for Equal Pay Act purposes a different,

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20/ Formerly the Civil Service Commission.

21/ 5 C.F.R. §§ 511.601-511.615.

22/ 5 U.S.C. § 5110(a).

23/ 5 U.S.C. §§ 5111, 5112.

far narrower scheme.[24] Certainly, no such intention can be imputed to the Congress merely because of its use of the term "establishment" which, as we have seen, should not, under the case law, be given a purely geographic meaning when applied to other governmental employment schemes which are centrally administered.

The Equal Pay Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e-16, and the Classification Act are in pari materia. These statutes are most appropriately construed together, and the Equal Pay Act should not be construed so as to undermine or contradict the related statutory schemes.[25] In short, it would be entirely unreasonable to superimpose only upon the Equal Pay Act a geographic fragmentation scheme.

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[24] Even if Congress might have expected the term "establishment" to be narrowly construed when the Equal Pay Act was initially applied to private employers, that understanding does not carry over to the proper construction of that term in the subsequently-included sphere of federal employment, for two reasons. First, as indicated above, the maximum wage, minimum hour provisions of the Fair Labor Standards Act have no relevance to governmental employement. Second, it would make no sense to assume that Congress meant the principle of equal pay for equal work to apply to issues arising under the Classification Act and under Title VII of the Civil Rights Act, but to have a wholly different, narrower rule govern when sex discrimination issues arose under the Equal Pay Act. In the absence of indicia of congressional intent regarding this problem when federal government employees were first covered under the Fair Labor Standards Act in 1974, it must be assumed that the Congress intended and expected consistency among the several statutory schemes. Expressions of congressional expectation of the relationship between the treatment of federal employees and the interpretations applicable "other sections of the economy," were confined to the issue of a possible conflict between the overtime provisions of the Fair Labor Standards Act and the earlier premium pay provisions applicable to federal employees. H. R. Rep. No. 93-913, 93rd Cong., 2d Sess. 28 (1974).

These conclusions are buttressed by general canons of statutory constructions. As a remedial statute, the Equal Pay Act must, of course, be liberally construed.[26] The Supreme Court's admonition in Phillips Co. v. Walling, 324 U.S. 490 (1945) is apt:

> The Fair Labor Standards Act was designed "to extend the frontiers of social progress' by 'insuring to all our able-bodied working men and women a fair day's pay for a fair day's work. 'Message of the President to Congress, May 24, 1934. Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of statutory language

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[25] See e.g., Shultz v. Wheaton Glass Co., supra; Ososky v. Wick, supra.

The government asserts that the plaintiff's claims are encompassed under the Classification Act, and the action therefore could only have been brought under that Act. But a violation of that statute does not negate an Equal Pay Act claim, especially where, as in this instance, and as in Title VII of the Civil Rights Act of 1964, the two laws cover similar subject matter. See Shultz v. Wheaton Glass Company, supra. The government's reliance to the contrary on United States v. Testan, 424 U S. 392 (1976), is misplaced, for the Supreme Court there dealt only with the jurisdiction of the Court of Claims and the reach of the Classification Act and the Back Pay Act.

There is no more reason to deny plaintiff her Equal Pay Act claim on the basis that her classification may also violate the Classification Act than it would be to regard improper classification as a jurisdictional defense to a Title VII suit. Yet, in literally hundreds of cases brought in this Court every year violations of Title VII are alleged to have occurred and are in many instances redressed on account of improper classifications.

[26] Peyton v. Rowe, 391 U.S. 54 (1968).

> and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people.[27]

It should be noted in this connection that many professional and managerial employees -- like this plaintiff -- have no counterparts in the particular office or plant where they may be located. To hold, therefore, that the term "establishment" has a narrow geographic meaning would leave such female employees wholly unprotected by the Equal Pay Act from unwarranted pay discrimination since the government's managers could always assert -- with justification, if a geographic test applied -- that there is no one to whom the female employee may be compared. See note 8 *supra*. The Court would not be justified in adopting a construction which effectively vitiated the Act for an entire class of employees.

For these reasons, the Court rejects the government's argument based on geographic location, and it holds that, at least for Pay Act purposes,[28] the "establishment" under that Act is the Civil Service in its entirety. It follows that, when a comparison is made between the pay of male employees and that of female employees, it must be made on the basis of the Civil Service as a whole, and a woman may not be paid less than a man merely because she works in a different location

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[27] 334 U S. at 493. While the *Walling* decision directly concerned the wage and hour provisions of the Fair Labor Standards Act, the court in *Goose Creek*, *supra*, regarded the quoted language as directly relevant to the sex discrimination provisions of the Act.

[28] Different considerations may conceivably be pertinent with respect to other laws.

This does not mean, of course, that the government may not distinguish between and among its employees on the basis of the duties and responsibilities vested in them. Nor does the Court hold that such distinctions are impermissible if geography is a factor.[29] However, if the duties and responsibilities of the position are substantially equal,[30] the burden is appropriately placed on the government, in view of the existence of a single nation-wide Civil Service system, to explain why it should be permitted to pay a lower wage or salary to a female employee in a particular geographic location, notwithstanding the Equal Pay Act, merely because she is employed at that location.[31] What the government may not do -- as it argues it has the authority to do -- is to refuse to take even the first step under the Equal Pay Act, that is, to compare the duties and responsibilities of similarly-situated employees of different genders to determine whether they warrant equal pay, merely because the employees happen to be assigned to different locations.

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[29] For example, the manager of a particular office of a government department or agency in New York City or Los Angeles who supervises hundreds of employees may be classified differently and may accordingly be paid more than a manager of a branch in a much smaller city with far fewer individuals under his supervision.

[30] The Court of Appeals for the Third Circuit said in Shultz v. Wheaton Glass Company, supra, 421 F.2d at 265, that "Congress, in prescribing 'equal' work did not require that the jobs be identical, but only that they must be substantially equal."

[31] See Corning Glass v. Brennan, 417 U.S. 188, 196 (1974).

III

In order to determine what comparisons between and among employees should be made for Equal Pay Act purposes, using the standard of function rather than that of mere geography, the Court now turns to the specific facts of this case. With regrad to function, it is appropriate to inquire into three principal factors: the decree of centralized control in the Office of General Counsel of the Customs Service, the work performed in the Regional Offices, and the position description under which the plaintiff operated.

First. The various Regional Offices were subject to regulation and control from the Chief Counsel who treated them in every respect as being entirely under his jurisdiction. Thus, the Regional Counsel Offices are described in official documents as being "a part of the Office of the Chief Counsel" and every Regional Counsel is placed "under the general administrative direction of the Chief Counsel"[32] (presumably as distinguished from that of the particular Regional Commissioner of the Customs Service). The Regional Offices do not automatically handle all cases that come in to them; assignments may be, and occasionally are, made by the Chief Counsel's Office in Washington. That Office also controls the settlement of cases.

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[32] Position description for General Attorney (Customs) GS-15.

The Chief Counsel likewise controls the pay and budget process for all the regions, and he monitors the activities of the Regional Counsel Offices through various means, including regular monthly reports. In fact, the Chief Counsel recently reorganized his Office, and that reorganization eliminated the Regional Office in which plaintiff was employed.[33/]

Second. All the Regional Offices of the Customs Service legal department perform the same basic functions regardless of their size or location. Not only did the Treasury not reduce the duties and responsibilities of the Baltimore Office or those of

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[33/] To be sure, some functions are performed by a Regional Counsel independently of the Chief Counsel's Office. It may also be true that, as the government claims, although the Chief Counsel sees many of the documents prepared in the offices of the Regional Counsel, "rarely does he review any of those documents before their issuance or submission to court," and he exercises his supervisory role "chiefly" through review of monthly statistical reports, quarterly reports of significant activities and an annual survey visit to each Regional Counsel office. It is also true that some Regional Offices handle more tort claims while the workload of others is characterized by litigation and administrative hearings, and that the staff varies from three attorneys and two support persons in one office to eight attorneys and four support persons in another. Defendants' Memorandum in Support of Motion for Summary Judgment at 4. But none of this establishes a Regional Office as an independent entity for Equal Pay Act or any other purposes. It merely demonstrates that employees at the GS-15 level have some decision-making latitude in the Customs Service just as they do in any agency of the federal government and that other, normal variations exist with respect to such matters as the precise distribution of the workload. See note 30 supra.

the individual occupying it,[34] but during plaintiff's incumbency that Office handled more cases than at least on other Regional Office (occupied by a male GS-15). Furthermore, while plaintiff was Regional Counsel in Baltimore, the caseload doubled compared to what it was when her male GS-15 predecessor was in charge.[35]

Third. Plaintiff was operating under a standard position description which is the same that was used for all other Regional Counsel positions.[36] That document classified the position held by plaintiff as a GS-15.[37] The classification was not changed after plaintiff's predecessor left office,[38] nor was it changed at any time during plaintiff's tenure.

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[34] In fact, the Chief Counsel of the Customs Service advised all Regional Counsels, including this plaintiff, on August 28, 1980, that

> I strongly believe that all Regional Counsels . . . should be judged on the same basis with respect to their performance.

Exhibit 2 attached to Grumbine affidavit of April 15, 1983.

[35] The quality of plaintiff's work was likewise beyond reproach. A memorandum from the Chief Counsel dated October 9, 1981 states that when plaintiff

> . . . assumed direction of the Baltimore office, its workload and productivity were extremely low; its reputation for availability, initiative and responsiveness was poor . . . . I am pleased to report that major strides have been made in improving the quality of legal services to the region . . . .

[36] That position description was used, *inter alia*, in classifying the position of plaintiff's GS-15 male predecessor, as well as that of Paul Wilson who was classified as a GS-15 without the one year in grade which is claimed by government to disqualify plaintiff from a GS-15. See Part IV *infra*.

[37] In the Civil Service, salary is determined by the classification. *Ososky* v. *Wick*, *supra*.

In response to these facts regarding the position description, the government's papers[39] suggest only two relatively minor problems. The government argues, first, that the vacancy announcement described the position merely as a GS-14/15 (rather than as the GS-15 as the position description required). But that vacancy announcement did not and it obviously could not vary the basic description of the job which, as indicated, called for a grade GS-15. Beyond that, the government seems to assert that the continued viability of the GS-15 position description in the context of plaintiff's application was the result of "inadvertance." That bare suggestion, unsupported by any evidence, is plainly insufficient to create a genuine issue of material fact.[40] Moreover, there would have been no basis whatever for the sudden establishment of a new position description. The position was what it had always been: the highest legal position in one of the nine regions in the Customs Service with duties and responsibilities equal to those of the other eight regions.

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[38] With respect to the replacement of a male employee in the same job with a lower-paid female, see *Thompson* v. *Sawyer*, 678 F.2d 257, 277 (D.C. Cir. 1982).

[39] Voluminous briefs and other papers were filed by both sides.

[40] The applicable regulations require agency management to maintain "current and accurate" descriptions of the position, and they further provide that the appointing official must assure himself, prior to appointment, that the position is properly classified. Federal Personnel Manual, ch. 511, subch. 4-4; ch. 312, subch. 4-5.a.

The government's motion for summary judgment, which is predicated on the theory that the Baltimore Regional Office of the Customs Service is a separate "establishment" within the meaning of the Equal Pay Act, will therefore be denied.

IV

Both plaintiff and the government have moved for summary judgment or partial summary judgment on alternative grounds.[41] These motions revolve primarily around regulations modelled on the so-called Whitten Amendment[42] which generally requires a federal employee to serve at least one year in a particular grade before being eligible for promotion to the next higher grade. A regulation promulgated by OPM provides that

> [a]n agency head may advance an employee to a position at GS-12 or above only after he has served one year at the next lower grade.[43]

The government claims that the OPM regulation constitutes a bona fide seniority system within the meaning of the Equal Pay

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[41] The Court will allow plaintiff to file her amended complaint to accommodate her alternative summary judgment motion.

[42] The Whitten Amendment is a congressionally-mandated rule of long standing.

[43] 5 C.F.R. § 300.602 (1982). A directive of the Treasury Department's General Counsel is to the same effect. General Counsel Directive No. 2 (Revised) ¶5.3.1., p. 4).

Act[44] and that, irrespective of any other considerations, plaintiff cannot complain of a violation of that statute. That is so, the government reasons, because when Ms. Grumbine was appointed a Regional Counsel, she was only a GS-13 and she therefore could not have been given a GS-15 rating without running afoul of the OPM regulation. While also making several other claims,[45] plaintiff responds primarily by pointing to the experience of one Paul Wilson who was appointed Regional Counsel at the same time as plaintiff at the GS-15 grade even though he, too, lacked the requisite one year in grade GS-14.[46]

It is obvious that, inasmuch as the one-year-in-grade requirement was waived[47] for Wilson, the OPM regulation is not iron-clad as the government would make it appear. Certainly, if that regulation was enforced selectively or discriminatorily, the government could not rely on it or the existence of a bona fide seniority system in defense of its actions, and the exception to the Equal Pay Act would not apply. And of course in this context as in others -- such as under Title VII of the Civil Rights Act -- the question of discriminatory treatment is primarily one of fact. There are here sharply differing views on the operative factors.

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[44] The Equal Pay Act mandates an exception to its requirements in a case where payment of differential wages is made "pursuant to . . . a seniority system . . . ." 29 U.S.C. § 206(d)(1).

[45] Plaintiff also argues that the vacancy announcement itself did not require service for one year at the GS-14 level, and that the OPM regulation may not have applied at all because of the existence at the Treasury of two tracks, one for promotions and the other for appointments, with the regulation applying only to the former. See Dowd v. United States, 713 F.2d 720 (Fed. Cir. 1983).

[46] Wilson, plaintiff, and the Regional Counsel for New Orleans were part of the same selection process: the positions were advertised simultaneously, the applicants were interviewed together, and the appointments were made at the same time. Only Margaret Mary Grumbine, the one female appointee, was classified and paid at a GS-14.

[47] There is provision in the regulations for such a waiver. See 5 C.F.R. Part 300, subpart F.

Thus, the government contends that, for various reasons, plaintiff was not situated as was Wilson. The latter, according to the government, had more experience; his assignment to a Regional Counsel position entailed significant personal hardship; and, unlike plaintiff, he specifically requested waiver of the regulation on hardship grounds.[48] Plaintiff, on the other hand, maintains that her prior experience was equivalent to

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[48] The government's argument that the treatment of Paul Wilson was "the proverbial exception that proves the rule" (Memorandum of March 7, 1983 at 8) is far from a satisfactory defense, however, particularly in a job classification with only seven members. Similarly unsatisfactory is the government's assertion that the waiver for Paul Wilson is a "red herring [which] merely serves to distract this Court from the consistently applied elibility requirement." Response filed November 7, 1983. While it may ultimately turn out that the Wilson departure from the rules was justified and does not affect plaintiff's claim, facts concerning his treatment are far from a "red herring"; they directly cast doubt on the government's contention that the eligibility requirements were, in fact, consistently applied.

Wilson's,[49] and that, unlike Wilson, she was never given an opportunity to apply for a hardship waiver.[50]

It is apparent from a mere recitation of these contentions that genuine issues of material fact exist with respect to the alternative summary judgment motions which cannot be resolved without a trial.[51] Accordingly, both of these motions will be denied.

Harold H. Greene
United States District Judge

Dated: April 3, 1984

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[49] See Shaw v. Boorstin, 517 F. Supp. 336 (D.D.C. 1981).

[50] Plaintiff also argues that the one-year time-in-grade requirement was established in this case only by an inadmissible affidavit. There is no merit to that contention. Irrespective of the technical admissibility or inadmissibility of the affidavit in question (or parts thereof), that document does no more than to serve as a conduit for documents (such as official directives and the like) which the Court may consider in any event under any reading of the Rules; *e.g.*, Rule 803(8) of the Federal Rules of Evidence.

[51] To permit a resolution of the disputed facts, the Court will lift the previously-imposed stay on discovery.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARGARET MARY GRUMBINE,
Plaintiff,
v.
UNITED STATES, et al.,
Defendants.

Civil Action No. 82-1938

FILED
APR 3 - 1984
JAMES F. DAVEY, Clerk

ORDER

For the reasons stated in the Opinion filed this date in the above-captioned case, it is this 3d day of April, 1984,

ORDERED That defendants' motion for summary judgment be and it is hereby denied, and it is further

ORDERED That plaintiff's alternative motion for summary judgment and defendants' alternative motion for summary judgment be and they are hereby denied, and it is further

ORDERED That plaintiff's motion to file an amended complaint be and it is hereby granted, and it is further

ORDERED That the stay of discovery be and it is hereby dissolved.

Harold H. Greene
United States District Judge